

2009 HOUSE NATURAL RESOURCES

HB 1239

2009 HOUSE STANDING COMMITTEE MINUTES

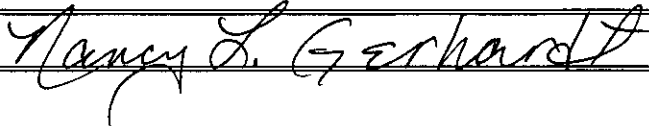
Bill/Resolution No. 1239

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 1-22-09

Recorder Job Number: 7544

Committee Clerk Signature 

Minutes:

Chairman Porter – We will open the hearing on HB 1239. Rep. Hofstad

Rep. Hofstad – This bill is in regards to posting of land. Posting is a difficult and arduous process. It isn't easy to go through the process and make sure it is done right and once it's done it's difficult to maintain those posters. You have to have them posited 888 yards apart.

They have to be signed with led gable characters. What happens is. These posters get used for target proactive, the weather away so that you can't read them.

Rep. Keiser – Thank you for clarifying what this language says. I think it is not a clear statement.

Chairman Porter – Rep. Hunskor

Rep. Hunskor – If a poster has the year 2000 on it is it still legal? Does it have to have a current date?

Rep. Hofstad – It will still be a legal poster.

Chairman Porter – For clarification of the existing law of posting. All that is required on a no hunting no trespassing sign is a name. There's no date, address or phone number. Only the name every 880 yards or if it is totally fenced, at those fence posts where there are gates.

That is the current law.

Chairman Porter – Further testimony in support of 1239.

Ladd Erickson – McLean Co. States Attorney – The first thing you do when a hunting on posted land case comes in is to determine whether the owner or tenant posted. That doesn't mean the landowner's kid or someone in the landowners family they wanted to take the phone calls because they aren't tenants. That is a deal breaker for enforcement even though it is a family relationship. The purpose of subsection 1 is to stop the technicality that frustrates landowners is that you have to be a lease holder basically. It wouldn't harm the bill to have the landowner, tenant or someone authorized by the owner in there. What happens is the signature fades with the weather if it is posted properly in September the legible name may not be there by December. There is substantial compliance, if a person follows these rules, puts the signs up right. We are trying to resolve some of the conflict here, keep it clear what the posting requirements are.

Rep. Keiser – I bet if a judge gives this instruction to a jury then the judge will have to explain it. It is not easily understood. A lawyer will be able to read this and say I got it, but you give this to the general public they will never be able to understand it. There has got to be a better way to say it.

Ladd Erickson – If there is a better way of writing it I would be glad to do that.

Rep. Nottestad – If a farmer puts up tires around his property with signs that are painted around his property there is no intent there.

Ladd Erickson – I have to look at each individual case very carefully and make a judgment call.

Vice Chairman Damschen – Rep. Hofstad

Rep. Hofstad – If we are going to err we need to err on the side landowner. If he has posted his land his intent is to post his land, maybe he hasn't done it right. If the poster fades away or someone takes a shot at it the intent is there.

Ladd Erickson – If the hunter knows he is doing wrong we don't want him to get off on a technical point.

Rep. Drovdal – If a hunter rips down a sign and destroys it to where you don't find it you couldn't prosecute it. Is that right?

Ladd Erickson – It can happen. I'm just trying to tell you there is a problem out there and we are trying to get it better.

Vice Chairman Damschen- In the last added language – to be clear that if a landowner made an attempt to post the land it is a violation for someone to go onto it to hunt.

Ladd Erickson – That is correct.

Vice Chairman Damschen – Any further testimony support of HB 1239?

Clarence Bina – United Sportsmen of ND – We support this bill as written.

Vice Chairman Damschen – Further testimony in support of HB 1239?

Brian Kramer – ND Farm Bureau – We support this bill and the farmers.

Vice Chairman Damschen - Further testimony in support of HB 1239?

Julie Ellingson – ND Stockmans Association – Private property rights are the corner stone of the ND Stockman's associations policy and mission and we rise in support of this bill. We think it will help property owners retain those rights and control their land as well as clearly state that others cannot take that right away from them.

Vice Chairman Damschen - Further testimony in support of HB 1239?

Woody Barth – ND Farmers Union – We support HB 1239.

Vice Chairman Damschen - Further testimony in support of HB 1239?

Jamie Bradley – Beulah – My understanding is this is to clarify the landowners rights. I think that is a good bill.

Vice Chairman Damschen - Further testimony in support of HB 1239? Any testimony in opposition to HB 1239?

Foster Ra Hagar – Cass Co. Wild Life Club – We understand the chore of the landowner posting his land and making sure it is done legally. On line 15 – Substantial Compliance – what is substantial compliance?

Rep. Keiser – It is the obligation of the hunter to understand posting and what posting entails isn't it?

Foster Ra Hagar – Yes but the language bothers me.

Rep. Keiser – What they are trying to say is: the hunter is supposed to understand what the law is. If a reasonable person can make a determination that it was posted in one spot and wasn't posted in another spot and it is a continuous property it is not unreasonable to say that this is a posted area despite the fact that a sign, for whatever reason, is missing. That is really what this bill is trying to say. What we are trying to fix is the technicalities.

Rep. Hofstad – The underlying issue here is the responsibility of the hunter to make sure he is in compliance with the law. It is his responsibility to make sure the property he is hunting on is either posted or not posted. If that means driving all the way around 4 sections it is his responsibility.

Foster Ra Hagar – I agree with what you are saying, but it is also the responsibility of the landowner does post it properly. That is what we are concerned about.

Chairman Porter – Further questions? Further testimony in opposition?

Myon Blomhagen – Drake – I oppose this bill for the simple fact the word tenant being crossed out. I would prefer the word or after it to authorize someone else.

Chairman Porter – Rep. Nottestad

Rep. Nottestad – Would you, as a tenant, be uncomfortable with that word crossed out?

Myron Blomhagen – I have signed complaints against trespassers, and I haven't had one go to prosecution yet. The technicalities you have to follow to the tee have eliminated everyone from the States Attorney from pursuing it. I see this as just one more possibility of being thrown out.

Rep. Nottestad – I assure you there will be a motion to amend this to remove the overstrike of tenant before we finish this up.

Rep. Keiser – When you sign an agreement does that agreement contain the authority to post the land?

Myron Blomhagen – I didn't reread my contract before I came, but I believe in at least one of them it does it does state it is for agricultural purposes. I don't know if I specifically have that and to rewrite each contract to make sure they do give me specific authorization to post would be very expensive.

Rep. Keiser – By putting tenant back in could it cause a problem with the landowner where the original landowner does not want that land posted?

Myron Blomhagen – I believe that would be up to the landowner themselves to put that in the contract. saying the tenant isn't allowed to post.

Rep. Keiser – So you are saying it is OK for the landowner to put it in the contract, but the tenant shouldn't have to do it?

Myron Blomhagen – I don't believe it should be necessary for the tenant to pursue each landowner.

Rep. Keiser – Your argument gives more authority to the tenant than to the original landowner.

Chairman Porter – Do you think the way this was written previously the unwritten rule was if you rent the land for agricultural purposes you also have the right to post someone else's land without their permission.

Myron Blomhagen – It was always my understanding that as a tenant you did have the authority. Legally I don't know.

Chairman Porter – Questions? Further testimony in opposition to HB 1239? Close the hearing on 1239.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1239

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 1-22-09

Recorder Job Number: 7548

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Chairman Porter – Opened hearing on HB 1239.

Rep. Nottestad – Remove the overstrike on line 7 – tenant .

Chairman Porter – For a clarification standpoint, do we want to keep things so they flow. The owner, or an individual authorized by the owner, or tenant – so those two are tied together because they both relate back to the owner and the tenant is after that fact. Is that alright.

Rep. Nottestad – I accept that as long as the tenant word is in there.

Chairman Porter - Vice Chairman Damschen

Vice Chairman Damschen – Is that going to say that an individual authorized by the tenant can post the lands?

Chairman Porter – No Rep. Keiser

Rep. Keiser – I think you are creating a whole bunch of problems. It sounds like you are saying the owner can post the land, or the tenant can post the land, or anyone authorized by the owner can post the land. So you are basically giving away the hunting rights. I see some combinations that may not work.

Rep. Hofstad – I have the same point. You basically have 2 people who are in charge now.

The owner & the tenant. You can have 2 conflicting opinions.

Rep. DeKray – I just wanted to make the comment that the tenant is the present law. I think that most land owners are under the impression that if they rent their land out the tenant has the right to post it if he wants, or you have the right to put it in the contract that he doesn't. If we take tenant out we are changing the law, if we leave it in we are not changing the law.

What we are changing, we are adding that the owner can authorize someone else to do it.

Rep. Keiser – If you put ????? back in you better take out where the owner can authorize.

Chairman Porter – Rep. DeKray the tenant can still post the land. If you have the wording in there – that an individual authorized by the owner – the tenant can still post the land. It is the owner's responsibility to post the land they own. Rep. Nottestad

Rep. Nottestad – We're making major changes here, and I'm not so sure we should be doing that.

Chairman Porter – Rep. Keiser

Rep. Keiser – If it's not in the contracts I'd be amazed. I think it is in the contracts.

Chairman Porter - Rep. DeKray

Rep. DeKray – With hunting becoming a high dollar thing in a lot of areas, before they rent they decide who's going to hunt there. I think it is more prevalent in contracts than it ever has been before. My comment was that is a pretty big change here in the law, but that is what we do here.

Chairman Porter – I agree, that is exactly what we do. Rep. Drovdal

Rep. Drovdal – Posting seems to be an unwritten agreement between the land owner and the tenant.

Chairman Porter - -Vice Chairman Damschen

Vice Chairman Damschen – If I was renting land to someone and posted it and then they came along and told me I didn't have the right to post it, I think when it came time to renew the lease I'd be looking for a new renter.

Chairman Porter – No other discussion we will vote on the motion by Rep. Nottestad.

Rep. Myxter – The or kind of throws me.

Chairman Porter – It could be any of the three. Only the owner, or and individual authorized by the owner, or the tenant.

Rep. Myxter – If there's no comma there – authorized by the owner or tenant. I think it would be better if you want to leave tenant in leave it before an individual. Only the owner, tenant, or an individual authorized by the owner. I think that's clearer.

Chairman Porter - Your amendment would read: Only the owner or tenant, or an individual authorized by the owner.

Rep. Nottestad – My motion would be to remove the overstrikes and add an "or" after the word tenant.

Chairman Porter – Is everybody clear on that? We will try a voice vote first. All those in favor yea. Oppose. Motion carries.

Chairman Porter – Now we have an amended bill in front of us. A motion from Rep. Drovdal for a Do Pass As Amended. 2nd by Rep. Clark Discussion. Rep. Pinkerton

Rep. Pinkerton – I don't have a question regarding that language, I do have a question about the word on line 15 – substantial. I can't support this with the word substantial in line 15.

Chairman Porter - The word substantial puts the responsibility on the owner to post the land on all sides. That word being in there protects you. Rep. Drovdal

Rep. Drovdal – It would actually protect the hunter by putting the responsibility on the landowner or tenant to post the land completely.

Chairman Porter – Rep. DeKray

Rep. DeKray – If you have it properly posted like it is supposed to be by law it protects both the landowner and the hunter. It goes both ways.

Chairman Porter – Further discussion. Seeing none the clerk will take the roll on a Do Pass As Amended for HB 1239.

Yes 9 No 1 Absent 3 Carrier DeKrey

January 22, 2009

VK
1/23/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1239

Page 1, line 7, remove the overstrike over "~~tenant~~" and insert immediately thereafter "or"

Page 1, line 16, after "or" insert "tenant or an"

Page 1, line 18, after "or" insert "tenant or an"

Renumber accordingly

Date: 1-22-09
Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1239

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Drovdal Seconded By Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson		
Vice Chairman Damschen	✓		Rep Hunsakor	✓	
Rep Clark	✓		Rep Kelsh		
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton		✓
Rep Hofstad	✓				
Rep Keiser					
Rep Nottestad	✓				

Total (Yes) 9 No 1

Absent 3

Floor Assignment DeKrey

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1239: Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). HB 1239 was placed on the Sixth order on the calendar.

Page 1, line 7, remove the overstrike over "~~tenant~~" and insert immediately thereafter "or"

Page 1, line 16, after "or" insert "tenant or an"

Page 1, line 18, after "or" insert "tenant or an"

Renumber accordingly

2009 SENATE NATURAL RESOURCES

HB 1239

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1239


Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: March 12, 2009

Recorder Job Number: 10787

Committee Clerk Signature



Minutes:

Senator Lyson opens the hearing on HB 1239, relating to posting of lands to prohibit hunting.

Representative Hofstad I stand here today in support of HB 1239. It does a couple things. It is a landowner friendly bill. In line 7 it expands the authorization or who may actually post the land. Under the current law it is only the tenant or landowner. We simply expand that to the tenant, landowner or any individual authorized by the land owner. Often times the posters get weathered, torn and destroyed. We are trying to apply some common sense to the law. If it is obvious the intent of the tenant or owner was to post the land and it is clear by circumstances it is considered posted.

Senator Lyson I have no problems with the landowner giving permission to someone else to post it, but I think it should be in writing.

Representative Hofstad It was discussed in our committee also. The burden of proof comes back to the owner. We had a considerable amount of discussion on the bill. We tried to make the bill clearer. We run into hunters in our fields where the land was clearly posted and they come back and say that the signature was gone or something similar. We are trying to assure that land owner if he posts his land he will keep hunters off of it.

Senator Triplett In the language already in the law you are not proposing to change, the law has some very specific requirements. In the new language you are proposing it is substantial compliance. I think we are making it less clear rather than clearer.

Representative Hofstad we are also saying that if there is some variance from the signature or clarity of the sign we now have the opportunity to prosecute.

Senator Triplett what do you want a prosecutor to do if a farmer doesn't want to be bothered with phone calls and they put a fresh new sign without a signature. Where is the line of substantial compliance?

Representative Hofstad I don't know. I think that burden ought to be on the hunter. I think if the farmer has gone through the work of posting his land then he probably expects people to stay off and I don't think he would be over burdened by phone calls asking for permission to go on his land. Sometimes people post their land not to keep hunters off completely but so they know who is on their land.

Senator Lyson I am having trouble with letting people post someone else's land even if they get permission. It would be a nightmare for a game warden to try and figure out if he was telling the truth if there was no documentation and the owner was out of town.

Representative Hofstad I have no problem with amending the bill if it will make it clearer.

Representative Damchen testified in favor of the bill. The question I have in regards to authorization is who is authorized to post it now. If initially the land owner made an effort to post his land in compliance with the law and the next year he hadn't made it out yet to post his land it is still considered posted. I do have some amendments (see attachment #1). There is another section in the code that deals with posting land for trespassing in regards to snowmobiles etc. We brought the sections into conformity.

Senator Freborg In the new portion of your recommended amendment we are now giving the individual authorized by the owner permission to give someone else permission?

Representative Damchen I think that is what the original bill does. That is how I would interpret the amendments I presented as well.

Senator Hogue Are the problems created by the snowmobilers different than the problems created by the hunters when they come upon your land?

Representative Damchen Some of them are different. I think trespass is the issue whether the problems that result from that are different or not.

Senator Triplett You are saying that you read the language of HB 1239 as it is before us now to give permission to an authorized individual both to post the land and also later grant permission to hunt upon that land?

Representative Damchen That is how I understand it. I may be assuming because of the situation a lot of us are in with absentee land owners. We are renting the land and we ask the owner to post the land. When we are giving the authority to post we assume it implies that we have the authority to let someone hunt. Your point is well taken.

Aaron Birst, Association of Counties, I think it is problematic when the first part of the bill says you must do X things and the second part says you must comply with Y things. Maybe this is something where you can put up the general first, you shouldn't trespass and you can prove that by a number of different factors. Certainly the states attorneys wouldn't have a problem putting in the chairman's suggestion and I haven't seen the amendments.

Senator Triplett As a prosecutor would you get the same thoughts as Representative Damchen in regards to assuming the person posting the land also has the right to allow

passage?

Aaron Birst I guess I could assume that, but assumptions in criminal law don't usually work to well. Certainly the owner controls the land so if there is some sort of written aspect which would make it easier for law enforcement, the owner would have to tell the individual authorized to post in writing that they could also let someone hunt.

Senator Erbele If I have a sign posted that says no hunting or trespassing and my name is on it, then they can't hunt. If I have an off roader out on my land would he be legal because I didn't have my address or date?

Aaron Birst It might be.

Senator Schneider Can you talk about how a prosecutor or judge would go about evaluating substantial compliance with this law?

Aaron Birst I think the intent here would be if the prosecution had some other evidence. (He gives an example).

Senator Schneider Are there any other areas in criminal law that are analogist to this substantial compliance business that we are talking about here?

Aaron Birst the only thing I can think of is the obscene and pornography.

Dennis Miller, Farmer, spoke in favor to the bill. I support the language that would allow the authorization of me to allow someone else to post my property. When I am out posting my land it is always on a nice day when I should be out harvesting. I would ask you to come up with language that would be acceptable in line 13. I would venture to say that 10 to 15% of my hunting signs are lost each year.

Brian Kramer, North Dakota Farm Bureau, we stand in support of the bill. We have had a lot of problems across this state, particularly in the western part of the state, with people not complying with the law because a sign is missing, or the name is missing. As long as the intent is clear the land should be assumed posted.

Julie Ellingson, North Dakota Stockmen's Association, spoke in favor of the bill (see attached testimony #2).

Senator Erbele I am wondering why a name should even be on a sign. You could eliminate 13-15 if we didn't have to. I can see on one hand that a person could post his land and hunters would know who to call to get permission. In this day and age we have GPS systems and plot maps so it is just as easy to figure out who land it is. If I don't have a sign that no hunting without permission and it just says no trespassing then that should mean for anything right? I wouldn't even need to have my name on it.

Julie Ellingson I do agree. There was a bill that talked about the posting that was killed on the house side that talked about the ambiguity in the differences between the posting requirements for snowmobiling versus hunting. We had indicated that if a land owner posts his/her land and the intentions are clear then why do they need to add the address and the other additional information? Our association has a long time standing policy which we call our no trespass policy. We believe that land should be considered posted without having to post it. We feel this bill is a step in the right direction.

Foster Ray Hager, Cass County Wildlife Club, we are opposed to this bill for a couple reasons. One reason is who is going to post the land and how do you go about giving them permission? What do you mean by substantial compliance and who interprets it? We understand and support the land owners that let hunters hunt their land. It is a big job to post the land and to go through all the trouble to do so.

Roger Kasemen, North Dakota Wildlife Federation, during our meeting we had decided to support the bill, but after sitting here and listening to the testimony and also some of the language I am going to change that to being against it. I am a former law enforcement officer and if I were called on a situation like this I would throw my hands up and walk away from it.

Other people have raised the issues of enforcing this. We support the farmers and landowner's authority to go out and post their land. The language should be clearer.

Vice Chair Hogue closed the hearing on HB 1239.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1239

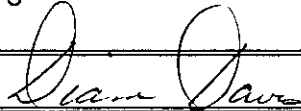
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: 4/2/09

Recorder Job Number: 11676

Committee Clerk Signature



Minutes: **Senator Lyson, Chairman**

Committee Work

Senator Hogue has brought in amendments along with amendments brought in earlier.

Senator Lyson said the amendments brought in earlier make it more complicated than it should have to be.

Senator Hogue explains the amendments and the language change.

Senator Lyson explains what "in writing" means. He explains that on some vacant farmstead people take it upon themselves to just start putting up signs. It gets very confusing.

Senator Triplett asks what the intention is. Anyone other than the owner, spouse, child, or tenant, spouse or child must have written permission to post someone else's land.

Senator Lyson says the owner can do what he wants to do with his land.

Senator Schneider asks about substantial compliance. Basically the amendment would require a prosecutor to prove that the hunter went onto the land knowing that the landowner's intent was to comply with the posting requirements of this section.

Senator Hogue said he asked Legislative Council about that term and they said they were comfortable with that term. There are ridged requirements for the posting of signs. The hunter should know what the intent of the landowner was.

Senator Schneider if there is any other sections in the code that uses the substantial compliance term that is used in a criminal sense.

Senator Hogue said the term is used in civil provisions of the code.

Senator Erbele says the bill deals with section 20 and mentions some of the amendments brought in were dealing with off-roading and snowmobiling. He asks if we want to consider that. He thinks they should be consistent. He asks if section 39 should be compatible with section 20.

Senator Triplett suggests they do them one at a time.

Senator Hogue moves 0203 amendments

Senator Triplett seconds

Verbal vote – all yes

Senator Schneider moves the unofficial amendments

Senator Triplett seconds

Senator Triplett asks for the amendment to be clarified again.

Senator Schneider again explains the amendment and says he is trying to make it less vague.

Senator Lyson comments that the judge will make good judgments.

Verbal vote 6 yes, 1 no, motion carried

Senator Triplett wonders if we shouldn't change the amendment to read spouse or child as

Senator Hogue's amendment does.

Senator Erbele would like to bring the hunting, snowmobiling, off-roading all compatible.

Senator Lyson says we would be changing to areas of the Century Code and putting them in one bill. This will certainly be in a conference committee.

Senator Triplett asks if the law clerk will put together the amendments to work.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1239

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: April 2, 2009

Recorder Job Number: 11699

Committee Clerk Signature

Kody Hauge

Minutes:

Committee Work

Senator Lyson opened committee work on HB 1239.

Jeff Nelson, Legislative Council presented a Hog House amendment that would incorporate changes proposed by Senator Hogue and Senator Schneider and incorporating those in Representative Damscher's amendments.

Senator Triplette she stated that she could imagine all kinds of internal conflicts between children of the landowners. She reference number 2 for example. All of a sudden hunters have six different people they can run to asking permission and before you had to get permission from the owner.

Senator Lyson agreed that it was a mess.

Senator Freborg said on page 2, subsection 2; Can they give permission to someone to post property?

Senator Lyson said yes. He stated that he liked the original bill better than he liked this. It is just too clumsy.

Senator Schneider said that he realizes it would be weird to authorize your kid in writing to post your land but it seems that they could do that.

Senator Lyson again stated he thinks it is too clumsy.

Senator Freborg said if that is what this says, that you authorize someone in writing to post your land and without your permission they could give someone else the authority to post that land, he asked if that was right or if he was reading it wrong.

Senator Lyson said he could not vote for it.

Senator Hogue said that he thinks this section is only trying to deal with the very narrow act of physically posting signs on the property. With the amendments they are trying to take language that might be appropriate for that act and add it to the no trespassing statutes for snowmobiles and 4-wheelers when maybe those require different language. The reason for adding spouse or child was that this bill was brought to us with the fundamental purposes, we don't want to give the trespassing hunter so many technical defenses. If you read the bill literally, it says only the owner or tenant can post. He foresaw a technical defense of what about the spouse or son. That is what typically happens. Is there a defense there? The part of the bill he likes is the language that talks about substantially compliance was good enough. The land was posted and it shouldn't make any difference who physically posted it. The part of the bill he likes gets rid of the technical defenses that are being used by trespassing hunters.

Senator Erbele asked if he tells his son to go out and post his land but his name is on the sign, the only way the person trespassing could use that as a technical defense is if he is sitting on a neighboring hill and sees my son post it instead of me. So if it is posted and has my name on it, it doesn't matter who nailed that sign up, does it?

Senator Hogue said that if he was the trespassing hunter's lawyer he will ask who posted it. When it says only the owner or tenant may post it that makes it very restrictive.

Senator Lyson said that it does say "or individual" authorized by the owner."

Senator Hogue asked, "Why wouldn't the language as laid out in the engrossed bill why wouldn't that work for our purposes? Or an individual authorized by the owner? Because it is not in writing."

Senator Schneider blamed that on the committee's chairman. He is the one who wanted it in writing.

Senator Lyson said maybe they need to go back to square one. We have made this awfully difficult. He said that the committee has accepted two amendments so they would have to reconsider the amendments they put on.

Senator Hogue moved to reconsider the amendments that were adopted April 2, AM on HB 1239

Senator Schneider seconded.

Passed on a voice vote. . Vote #3

Senator Schneider moved the adoption of the unofficial Schneider Amendment.

Senator Hogue seconded.

Passed on a voice vote. #4

Senator Hogue moved a Do Pass as amended.

Senator Erbele seconded.

The committee discussed what the authorized posting meant and who this authority was given to and if they could in turn give it to someone else.

Senator Triplett asked if the law defines what the word posting means. Some people are talking about the physical act of putting it up and she thinks any owner can hire someone to put up their signs. The questions are what the signs say? Did the signs have the owner's

name and phone number or do they have the name of the person authorized? So when

● talking about posting are we talking about the physical act of putting up the signs or are we talking about the name that goes on the sign?

Senator Hogue said that he thinks the answer is found in the first sentence that says "that you post the land by placing signs alongside the public highway or the land giving notice." To him, that means the physical act of placing a sign. He is not troubled by the last sentence in 12-39 because he thinks that you give someone permission to post your land, the fair implication from agency law is that impliedly have to authority at some point to take them down. That is all that section is saying.

Senator Triplett said that the next sentence after the one Senator Hogue read says, "The name of the person posting the land must appear on each sign in legible characters." If by adding the new language allowing some other individual authorized by the owner to post that this individuals name is the name that goes on the sign. In her mind the word posting is not the physical act of posting the signs but who gets to give other people permission to hunt.

Senator Eberle said what she read is current law. In his area an outfitter leases hunting rights and it is the outfitters name on the sign because the owner gave him authorization to put up those signs.

Senator Triplett said that was done by lease so the outfitter is the tenet but by throwing in this other authorized person that doesn't have a lease she thinks they are really opening it up.

Senator Lyson said that if we are just talking about the physical posting this allows anyone to put the signs up and this takes out other individuals.

Senator Hogue said that section 20-101-17 seems to address the physical posting of the land and the person who physically does it, their name has to appear on the sign. I don't think it

● necessarily follows that they are authorized to say who can come upon that land.

Senator Lyson called for the vote on a Do Pass as amended.

Roll call vote: 4-3-0 #5

Senator Schneider will be the carrier.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1239

Page 1, line 6, overstrike "by owner"

Page 1, line 7, after "tenant" insert ", the spouse or child of the owner or tenant," and after
"owner" insert "in writing"

Page 1, line 16, after "tenant" insert ", the spouse or child of the owner or tenant," and after the
second "owner" insert "in writing"

Page 1, line 18, after "tenant" insert ", the spouse or child of the owner or tenant,"

Page 1, line 19, after "owner" insert "in writing"

Renumber accordingly

Date: 4/2/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee

Bill #: 1239

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Amendment .0203

Motion Made By Sen. Hogue Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman			Senator Jim Pomeroy		
Senator David Hogue, Vice Chairman			Senator Mac Schneider		
Senator Robert S. Erbele			Senator Constance Triplett		
Senator Layton W. Freborg					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Carried-voice vote

UNOFFICIAL PROPOSED AMENDMENTS to ENGROSSED HB 1239

- Proposed by Sen. Schneider -

Page 1, line 7, after the boldface period insert:

“1.”

Page 1, line 13, remove “If the”

Page 1, remove lines 14 through 16

Page 1, line 17, remove line “clear from the circumstances.” and after the period insert:

“2.”

Page 1, after line 19, insert:

“3. Even if the owner, tenant, or individual authorized by the owner varies from the provisions of subsection 1, an individual may be found guilty of violating section 20.1-01-18 if the owner, tenant, or individual authorized by the owner substantially complied with subsection 1 and the individual enters onto the land knowing that the intent of the owner, tenant, or an individual authorized by the owner was to comply with this section.”

Renumber Accordingly

Date: 4/2/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate _____ Natural Resources _____ Committee

Check here for Conference Committee

Bill #: 1239

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Amendment

Motion Made By Sen. Schneider Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman			Senator Jim Pomeroy		
Senator David Hogue, Vice Chairman			Senator Mac Schneider		
Senator Robert S. Erbele			Senator Constance Triplett		
Senator Layton W. Freborg					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Unofficial Schneider amendment

Carried - voice vote

Date: 4/2/09

Roll Call Vote #: 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate _____ Natural Resources _____ Committee

Check here for Conference Committee Bill Number: 1239

Legislative Council Amendment Number Resonance action by which we adopted amendments this morning

Action Taken Do Pass Do Not Pass Amended Amendment

Motion Made By Sen. Hogue Seconded By Sen. Schneider

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman			Senator Jim Pomeroy		
Senator David Hogue, Vice Chairman			Senator Mac Schneider		
Senator Robert S. Erbele			Senator Constance Triplett		
Senator Layton W. Freborg					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*earned
voice vote*

Date: 4/2/09

Roll Call Vote #: 4

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate _____ Natural Resources _____ Committee

Check here for Conference Committee Bill Number: 1239

Legislative Council Amendment Number Unofficial Schneider Amend.

Action Taken Do Pass Do Not Pass Amended Amendment

Motion Made By Sm Schneider Seconded By Sen Hogue

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman			Senator Jim Pomeroy		
Senator David Hogue, Vice Chairman			Senator Mac Schneider		
Senator Robert S. Erbele			Senator Constance Triplett		
Senator Layton W. Freborg					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Carried
voice vote

Date: 4/2/09

Roll Call Vote #: 5

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Natural Resources Committee

Check here for Conference Committee

Bill Number: 1239

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Amendment

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman		✓	Senator Jim Pomeroy	✓	
Senator David Hogue, Vice Chairman	✓		Senator Mac Schneider	✓	
Senator Robert S. Erbele	✓		Senator Constance Triplett		✓
Senator Layton W. Freborg		✓			

Total (Yes) 4 No 3

Absent _____

Floor Assignment Sen. Schneider

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1239, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1239 was placed on the Sixth order on the calendar.

Page 1, line 7, after the boldfaced period insert:

"1."

Page 1, line 13, remove "If the"

Page 1, remove lines 14 through 16

Page 1, line 17, remove "clear from the circumstances." and after "~~No~~" insert:

"2."

Page 1, after line 19, insert:

"3. Even if the conduct of the owner, tenant, or individual authorized by the owner varies from the provisions of subsection 1, an individual may be found guilty of violating section 20.1-01-18 if the owner, tenant, or individual authorized by the owner substantially complied with subsection 1 and the individual enters onto the land knowing that the intent of the owner, tenant, or individual authorized by the owner was to comply with this section."

Renumber accordingly

2009 HOUSE NATURAL RESOURCES

CONFERENCE COMMITTEE

HB 1239

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1239

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: 4-16-09

Recorder Job Number: 11907

Committee Clerk Signature

Nancy S. Gerhardt

Minutes:

Chairman Hofstad: Call the Conference Committee on HB 1239 to order. I've looked at the amendments the way the senate changed the bill, and in general I think it's good. There are some issues and problems. I think Senator Schneider, you've been in communications with Mr. Erickson and there are some problems.

Senator Schneider: I haven't been in contact with him for a couple weeks. I thought he was going to be here either today or throughout this process at some point. There are some concerns he would like to address.

Chairman Hofstad: I have been talking with him, communicating back and forth. We have developed some amendments that deal with that particular issue. At this time I will pass those amendments out and we can look at those. See **Attachments # 1 & 2**. As the bill is now written it would be almost impossible to prosecute somebody, especially if they are hunting off the road. Hunting off the road when the land is posted on both sides is illegal. I think the amendments you have before you address that issue and clarify the law and clean up the language.

Rep. DeKrey: What you would be asking us to do is substitute the senate amendment with this amendment?

Chairman Hofstad: Exactly, the conference committee would reject the amendments adopted by the senate and further amend the bill.

Rep. DeKrey: To keep this moving I'll make that motion.

Rep. Myxter: 2nd.

Chairman Hofstad: There is a motion to reject the senate amendments and to amend the bill.
Discussion.

Senator Schneider: I do like these amendments better than the original house version. The original house version ?????? the attention of the owner of the land. Having that be clear from the circumstances. The amendments you just passed out ???????? would be clear be clear from the circumstances. I still have a small concern about the phrase "clear from the circumstances". Under the 14th amendment the void for ????? doctrine, there must be ascertainable standards of guilt, that includes applicable tests used to ascertain guilt. That is from a supreme court case. I don't know if this would be void for vagueness or not. That was the intent of my amendment in the senate. I'm curious, I wish Ladd were here to explain why this would make it hard to prosecute individuals hunting from the road. I'm not sure if that's even related. I see this applying in the situation where somebody walks into land that is clearly posted even though it doesn't comply explicitly with all the requirements under this section.

Mr. Robert Timian: Chief Game Warden ND Game & Fish – The amendment as currently written would create an expectation to the landowners out there, that they had 1 sign missing or 1 sign without a signature on it, that they could still gain a prosecution. In our view is the language in sec. 3 of the senate amendments line 22, where it says "and the individual enters into the land knowing the intent of the owner, tenant, or individual authorized by the owner was to comply with this section". If you met these exact standards, which are not vague, the landowner met those and somebody enters into the land he can be prosecuted. What this

does is, even if the landowner substantially complies, to get a prosecution, the prosecution would have to go into the mind of the owner and say, not only did he know what his intent was, but you would have to go into the mind of the perpetrator and say, did the perpetrator know what the land owner intended when he posted the land. I'm not so sure you can do that with any clarity.

Senator Schneider: I think the part on going into the mind of the owners is well taken, but I also think we do this in criminal all the time. The murder you have to prove it was intentional. You go into the mind of the criminal defendant to prove that. I don't feel super strong about this and I think these amendments are probably fine.

Mr. Timian: We have to go into the mind of the perpetrator and he has to have then known what the landowner did, so there's actually another step there and that would make prosecution extremely difficult under this amendment.

Senator Schneider: I think that's a good point.

Senator Hogue: I have a question about sub. sect. 1, line 11, the signs must be readable from the outside of the land. Why must it be readable from the outside of the land, what is the purpose of that phrase?

Mr. Timian: That is the language in the existing law for quite some time. When people enter the land they come from the outside in. As a person walking in, you see the language as you're coming in. If you have to have the signs facing out, not in. The written part of the sign, most signs are written on one side and are blank on the other, this would mean the language should be facing out so that anyone coming in can read it, not someone going out.

Senator Hogue: Is this telling the person posting the land that the font must be so large so you can read it while you're not on the land.

Mr. Timian: I've been around with this existing language for about 25 years. In my experience the size of the font has never been an issue. It would only be an issue if the sign was so faded you couldn't read what it said. If the average reasonable person can read what it says on the way in, it has never been an issue.

Rep. DeKrey: Your last statement says you're OK with these amendments?

Senator Schneider: It is to the point you do not only have to understand the state of mind of the trespasser, but also the owner is a good one. I will probably vote for this amendment. I'm concerned about "clear from the circumstances". What is "clear from the circumstances"? Unless anyone of us can define that right now, chances are this law may be unconstitutional. A creative lawyer could get an alleged trespasser out of a charge because of that. If game and fish is comfortable with it and law enforcement and county prosecutors are fine with it, then I'll vote for it.

Mr. Timian: From our standpoint is the enforcement end of it. We would be comfortable with either the existing law as it is, or if the prosecutors are comfortable with it we would go with the amended. If the committee would so desire to return to the original language and make no changes at all, we are also comfortable with that.

Rep. DeKrey: Question

Chairman Hofstad: The question has been called for the motion on the floor before us for the committee to reject the amendments adopted by the senate and further amend the bill with the amendments in front of you. The clerk will call the roll.

Vote: 6 Yes 0 No 0 Absent Carrier: Hofstad Motion carries

VK
4/16/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1239

That the Senate recede from its amendments as printed on page 1176 of the House Journal and page 1009 of the Senate Journal and that Engrossed House Bill No. 1239 be amended as follows:

Page 1, line 7, after the boldfaced period insert:

"1."

Page 1, line 13, remove "If the"

Page 1, remove lines 14 through 16

Page 1, line 17, remove "clear from the circumstances." and after "~~No~~" insert:

"2."

Page 1, after line 19, insert:

"3. Even if the conduct of the owner, tenant, or individual authorized by the owner varies from the provisions of subsection 1, an individual may be found guilty of violating section 20.1-01-18 if the owner, tenant, or individual authorized by the owner substantially complied with subsection 1 and notice against hunting or trespassing is clear from the circumstances."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1239 (, as (re)engrossed):

Date: 4-16-2009

Your Conference Committee House Natural Resources

For the Senate:

For the House:

Roll		YES / NO	Roll		YES / NO
P	Senator Hogue	✓	X	Chairman Hofstad	✓
P	Senator Freborg	✓	P	Rep. WeKrey	✓
P	Senator Schneider	✓	P	Rep. Myxter	✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1176 -

 , and place on the Seventh order.

 , adopt (further) amendments as follows, and place 1239 on the Seventh order:

 , having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

(Re)Engrossed 1239 was placed on the Seventh order of business on the calendar.

DATE: 4-16-2009

CARRIER: Hofstad

LC NO. <u>90518.0206</u> of amendment <u>0400</u>
<u>0400</u>
LC NO. <u> </u> of engrossment
<u> </u>
Emergency clause added or deleted
Statement of purpose of amendment

MOTION MADE BY: Rep. WeKrey

SECONDED BY: Rep. Myxter

OTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1239, as engrossed: Your conference committee (Sens. Hogue, Freborg, Schneider and Reps. Hofstad, DeKrey, Myxter) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1176, adopt amendments as follows, and place HB 1239 on the Seventh order:

That the Senate recede from its amendments as printed on page 1176 of the House Journal and page 1009 of the Senate Journal and that Engrossed House Bill No. 1239 be amended as follows:

Page 1, line 7, after the boldfaced period insert:

"1."

Page 1, line 13, remove "If the"

Page 1, remove lines 14 through 16

Page 1, line 17, remove "clear from the circumstances." and after "~~No~~" insert:

"2."

Page 1, after line 19, insert:

"3. Even if the conduct of the owner, tenant, or individual authorized by the owner varies from the provisions of subsection 1, an individual may be found guilty of violating section 20.1-01-18 if the owner, tenant, or individual authorized by the owner substantially complied with subsection 1 and notice against hunting or trespassing is clear from the circumstances."

Renumber accordingly

Engrossed HB 1239 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1239

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1239

Page 1, line 1, after "20.1-01-17" insert ", subdivision g of subsection 5 of section 39-24-09, and subdivision g of subsection 5 of section 39-29-09"

Page 1, line 2, after "hunting" insert ", the operation of snowmobiles, and the operation of off-highway vehicles"

Page 1, after line 19, insert:

"SECTION 2. AMENDMENT. Subdivision g of subsection 5 of section 39-24-09 of the North Dakota Century Code is amended and reenacted as follows:

- g. Upon any private land where the private land is posted by the owner or tenant or an individual authorized by the owner prohibiting trespassing. The name of the person posting the land must appear on each sign in legible characters. The posted signs must be readable from the outside of the land and must be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart, provided further that as to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed lands. If the posting of the land varies from the provisions of this subdivision, an individual may be found guilty of violating this section if there is substantial compliance with this section and the intention of the owner or tenant or an individual authorized by the owner to post the land is clear from the circumstances. A person may not deface, take down, or destroy posting signs, or post property without the permission of the owner or tenant or an individual authorized by the owner.

SECTION 3. AMENDMENT. Subdivision g of subsection 5 of section 39-29-09 of the North Dakota Century Code is amended and reenacted as follows:

- g. On any private land where the private land is posted prohibiting trespassing. The name ~~and address~~ of the person posting the land ~~and the date of posting~~ must appear on each sign in legible characters. The posted signs must be readable from outside the land and be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart. Land entirely enclosed by a fence or other enclosure is sufficiently posted by posting of these signs at or on all gates through the fence or enclosure. If the posting of the land varies from the provisions of this subdivision, an individual may be found guilty of violating this section if there is substantial compliance with this section and the intention of the owner or tenant or an individual authorized by the owner to post the land is clear from the circumstances. A person may not deface, take down, or destroy posting signs, or post property without the permission of the owner or tenant or an individual authorized by the owner."

Renumber accordingly

North Dakota



STOCKMEN'S ASSOCIATION

407 SOUTH SECOND STREET
BISMARCK, NORTH DAKOTA 58504
Ph: (701) 223-2522
Fax: (701) 223-2587
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www.ndstockmen.org

HB 1239

Good morning, Mr. Chairman and committee members. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

The North Dakota Stockmen's Association supports HB 1239, as it will help landowners preserve their private property rights and penalize those who trespass on posted property, even if their signs are not perfect.

As many of you know, our association has a long-standing trespass policy that supports legislation that would initiate a no-trespass law on ag property, or, in other words, a bill that would "post" land without having to "post" land. It's a concept the legislature has explored, but rejected, in several previous sessions. While this is still our preference, the language in this bill goes far in helping landowners retain their rights and makes a giant step in the right direction.

For these reasons and those described by previous speakers, we ask that you please give this bill favorable consideration.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1239

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 20.1-01-17, subdivision g of subsection 5 of section 39-24-09, and subdivision g of subsection 5 of section 39-29-09 of the North Dakota Century Code, relating to posting of lands to prohibit hunting, the operation of snowmobiles, and the operation of off-highway vehicles; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-01-17 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-17. Posting of lands by owner or tenant to prohibit hunting - How posted - Signs defaced.

- new
word.*
1. Only the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing of any land may post it the land by placing signs alongside the public highway or the land giving notice that no hunting is not permitted on the land. The name of the person posting the land must appear on each sign in legible characters. The signs must be readable from the outside of the land and must be placed conspicuously not more than eight hundred eighty yards [804.68 meters] apart. As to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed land. No
 2. A person may in any manner not deface, take down, or destroy posting signs, or post property without the permission of the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing.
 3. If the posting of the land varies from the provisions of subsection 1, an individual is guilty of violating section 20.1-01-18 if the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing substantially complies with subsection 1 and the individual enters onto the land knowing that the intent of the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing was to comply with this section.

SECTION 2. AMENDMENT. Subdivision g of subsection 5 of section 39-24-09 of the North Dakota Century Code is amended and reenacted as follows:

- g. (1) Upon any private land where the private land is posted by the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing prohibiting trespassing. The name of the person posting the land must appear on each sign in legible characters. The posted signs must be readable from the outside of the land and must be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart, provided further that as to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed lands.

- (2) A person may not deface, take down, destroy posting signs, or post property without the permission of the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing.
- (3) If the posting of the land varies from the provisions of paragraph 1, an individual is guilty of violating paragraph 1 if the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing substantially complies with paragraph 1 and the individual enters onto the land knowing that the intent of the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing was to comply with this subsection.

SECTION 3. AMENDMENT. Subdivision g of subsection 5 of section 39-29-09 of the North Dakota Century Code is amended and reenacted as follows:

- g. (1) On any private land where the private land is posted prohibiting trespassing. The name ~~and address of the person~~ owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing posting the land ~~and the date of posting~~ must appear on each sign in legible characters. The posted signs must be readable from outside the land and be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart. Land entirely enclosed by a fence or other enclosure is sufficiently posted by posting of these signs at or on all gates through the fence or enclosure.
- (2) A person may not deface, take down, or destroy posting signs, or post property without the permission of the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing.
- (3) If the posting of the land varies from the provisions of paragraph 1, an individual is guilty of violating paragraph 1 if the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing substantially complies with paragraph 1 and the individual enters onto the land knowing that the intent of the owner or tenant, the spouse or child of the owner or tenant, or an individual authorized by the owner in writing was to comply with this subsection."

Renumber accordingly

Attachment #2

Hofstad, Curt L.

From: Porter, Todd K.
Sent: Wednesday, April 08, 2009 2:02 PM
To: Hofstad, Curt L.
Subject: FW: 1188 &1239

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Fyi on your bill.

Todd

From: Ladd Erickson [mailto:lerickson@state.nd.us]
Sent: Monday, April 06, 2009 11:17 AM
To: Schneider, Mac J.
Cc: Porter, Todd K.
Subject: 1188 &1239

HB 1239

Senator - Thank you for the phone call.

On HB1239 I think the Senate made some good improvements to the bill, but there is that problematic clause on lines 22-24. "and the individual enters onto the land knowing the intent of the owner,....., was to comply with this section".

There are a couple problems with this. First, a large percentage of these cases do not involve "entering onto the land", but involve shooting from road ditches where the land on both sides of the road is posted. Putting this language in the law is problematic. Second, "knowing" is sort of a term of art. "Knowingly" is a definition in 12.1. Whether or not the courts will use that definition when interpreting "knowing" in a statute depends on how "knowing" is used. Here I think the courts may construe it to mean the hunter had to have actual notice of the landowners intentions. Which would mean the hunter and landowner know each other, which isn't always or even often the case with hunting on posted land cases. I think we can address the committees concerns here in a conference committee by making the state prove that the hunter clearly would have known the land was posted.

On HB1188 - The amendment will invalidate the statute and make so it will never be able to be charged. For the big overbag cases and such, we need "offenses" not "convictions". Also, on page 2 lines 28-29 the state has to prove the "predicate offenses" were "intentionally" committed. The "offenses" in the statute were taken out by amendment, but this language stayed in there, so it will likely be interpreted by the courts to mean the prior convictions need to have been intentionally committed. But none of the prior judgments will have any indication on them that they were committed "intentionally". So the SA will never have the required amount of 'intentionally' committed prior convictions to enhance to the felony. I am not sure what the committees concerns are will this bill, but in a conference committee I am certainly willing to try and address those concerns. I am copying Rep. Porter with this and if these bills pass I am certain he will be willing to work with us on addressing these issues.. Thanks Ladd