

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 288

(Senator Waldstreicher)

Judicial Proceedings

Judiciary

Criminal and Civil Trespass - Professional Land Surveyors - Exception

This bill creates exceptions to criminal prohibitions against trespass on property under Title 6, Subtitle 4 of the Criminal Law Article and the common law tort of trespass for a “professional land surveyor” or an agent or employee of a professional land surveyor who enters the property of another to “practice land surveying.”

Fiscal Summary

State Effect: The bill is not expected to materially affect State finance and operations.

Local Effect: The bill is not expected to materially affect local finances and operations.

Small Business Effect: None.

Analysis

Bill Summary: The bill’s exception to the common law tort of trespass does not affect any immunities from civil liability or defenses established by any other provision of the Maryland Code or available at common law or equity to which a professional land surveyor, or an agent or employee of a land surveyor, may be entitled. This exception also does not impair the right of a person to seek redress under any other provision of the Maryland Code or at common law or equity for conduct by a professional land surveyor, or an agent or employee of a professional land surveyor, that is otherwise actionable.

The bill defines a “professional land surveyor” as a land surveyor who is licensed by the State Board for Professional Land Surveyors to practice land surveying. “Practice land surveying,” as defined under the bill and § 15-101(k) of the Business Occupations and

Professions Article, means providing or offering to provide professional services that require the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the requirements of the relevant law to authoritatively determine, regardless of the technology or method used, the accurate and precise location of a feature, object, or boundary of real property with reference to the surface of the earth, space above the surface of the earth, or underground. This definition includes a variety of specified practices.

“Practice land surveying” does *not* include the design, preparation, or specifications for (1) community water or wastewater treatment collection or distribution systems; (2) community pumping or lift stations; or (3) geotechnical or structural design components of sediment control or stormwater management ponds or basins.

Current Law:

Criminal Trespass on Real Property

A person may not enter or trespass on property that is posted conspicuously against trespass by (1) signs placed where they reasonably may be seen, or (2) paint marks that conform with the regulations of the Department of Natural Resources and are made on trees or posts that are located at each road entrance to the property and adjacent to public roadways, waterways, and other adjoining land. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 90 days and/or a \$500 maximum fine. For a second violation occurring within two years of the first violation, violators are subject to imprisonment for up to six months and/or a fine up to \$1,000. For each subsequent violation occurring within two years after the preceding violation, violators are subject to imprisonment for up to one year and/or a fine up to \$2,500.

A person may not wantonly enter or cross over private property after having been notified by the owner or the owner’s agent not to do so, unless entering under a good faith claim of right or ownership. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 90 days and/or a fine up to \$500. For a second violation occurring within two years of the first violation, violators are subject to imprisonment for up to six months and/or a fine up to \$1,000. For each subsequent violation occurring within two years of the preceding violation, violators are subject to imprisonment for up to one year and/or a fine up to \$2,500.

A person may not wantonly enter on the cultivated land of another without permission. A person who violates this title is guilty of a misdemeanor and subject to imprisonment for up to 90 days and/or a fine up to \$500.

Title 6, Subtitle 4 of the Criminal Law Article contains additional provisions, including use of a vehicle on private property, use of an off-road vehicle on private property, and refusal to leave a public building or grounds.

Civil Trespass on Real Property

A trespass is “an intentional or negligent intrusion upon or to the possessory interest in property of another.” *Ford v. Baltimore City Sheriff’s Office*, 149 Md. App. 107, 129 (2002) A prevailing plaintiff must establish that (1) the defendant committed a physical act or force against the plaintiff’s property without the plaintiff’s consent and (2) the defendant’s actions interfered with the plaintiff’s possessory interest in that property. *Id.* Consent to enter land or property can be restricted or conditional and creates a privilege of entry so long as the scope of the consent is not exceeded. *United Food & Commercial Workers International Union, et al. v. Wal-Mart Stores, Inc., et al.*, 228 Md. App. 203, 234 (2016), *citing* Restatement (Second) of Torts, 31 § 168 (1965).

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1230 (Delegate Holmes) - Rules and Executive Nominations.

Information Source(s): Baltimore, Frederick, Montgomery, and Somerset counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of Legislative Services

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