

Testimony of VTFB, H.545, House  
Committee on Transportation

I am the legislative Director for Vermont Farm Bureau(VTFB). We understand that this bill addresses a tragic situation where a young man got hurt in a public way by a barrier he didn't see. We are very sad when this happens to anyone. We certainly don't want anyone hurt anywhere and we currently go to great lengths to ensure people don't get hurt on our farms. Since I represent VTFB all my comments use the word farmer in place of property owner but they are one and the same.

As Legislative Council testified yesterday, this is not a simple bill. You heard yesterday from the sponsor, Representative Hubert, that he wants only modest civil penalties attached to this bill; he mentioned up to \$100 for a violation. But this bill does the opposite. It would subject Vermont farmers to unlimited personal liability for violations. It would drive up the cost of insurance premiums for farmers, if we could even get insurance against this kind of a lawsuit.

This bill would be very challenging for farmers to comply with. Farmers have miles and miles of fences and multiple gateways and many, many barriers whose sole purpose is to increase public health and safety by fencing in their animals and productive fields.

Let me now walk you around an average farm. It consists of about 150 acres. If it has livestock it has fences to keep animals in. The type of fence most common today is high tensile wire. It is as thin as spaghetti. If the farm grows crops it may have barriers or gates to keep others out so that productive land isn't damaged by atvs and snowmobiles. This average farm has a sugar bush with sap lines in the woods. Because Vermont was 85 % deforested, it has old logging roads and old fence lines in the woods including stonewalls. It has equipment, some old and discarded, and other machinery in fields. And it has dumps of all sorts of rusting equipment. Because of the new water quality regulations it also has high tensile fence along the river banks. The new water quality law, Act 64 , requires this fencing to keep the cows contained when they cross a stream from field to field. All livestock fences have lots of gateways and barriers.

Farms have internal and external ways as broadly defined by this proposed law. An external way might be a gateway or any type of opening along a farm's perimeter, along a public road. An internal way would be any opening onto a logging road within the farm or between fields. Because every important word in this proposed law is defined as broadly as it can be, a typical farm could have 20 or more ways and have 20 or more barriers in place to keep animals in or out and people out. As noted, many of a farm's barriers are a single strand of tensile fence which is electrified. This law makes farmers take out all barriers or mark every one so that they are visible day and night. If a farmer could get insurance against liability under this new law, I doubt very much that s/he will be able to afford it.

You also heard from legislative counsel yesterday that this bill changes, profoundly, current law. She emphasized that these are very significant changes. Even if a farmer posts her land against trespassing she is not protected from a lawsuit. For example, if someone on an ATV or snowmobile or dirt bike, who is driving on a paved road, pulls into her posted gateway and hits the barrier and gets injured and that barrier is not properly illuminated, the farmer will be liable. This is very very important for everyone here to understand that this person who is trespassing--perhaps speeding or even impaired ---none of this matters-- can and will sue the farmer for thousands and perhaps millions of dollars and win if this law as written is passed. Under current law, snowmobiles and atvs are prohibited from a farmer's land, unless invited. Under the proposed law, farmers would be foolish to invite recreational use of their land. Legislative counsel said this law creates a negligence per se standard applicable against the farmer. This means, she said, that the injured person does not have to prove duty or breach of duty, only that s/he got hurt and that the barrier caused the injury. This law could not have been written any stronger in favor of plaintiffs and their lawyers. This law could not be worse for farmers.

And remember, that even if a farmer illuminates obvious barriers, she can still be sued when someone is injured. Was the illumination visible enough? Was the barrier within the scope of the law; should the farmer have known that trespassers use the way for motor vehicles? Even if the farmer is right, she stills needs to defend herself in court and incur the

emotional and financial costs that brings, with no possibility of getting their costs covered.

Given that the purpose of this law is all about safety, to save lives and reduce injuries, there is an opportunity, but no provision for, education here. VTFB believes in general that it is far easier to educate the people we are trying to protect, than to hold all farmers responsible for removing, marking or warning people of all potential hazards to protect them.

Finally this law is very broad not only in definitions but in scope: it applies not only to public ways but to all private lands as well, where's currently atvs and snowmobiles and dirt bikes have no right to be unless invited. It allows an injured person to sue the landowners themselves but also those who rent their land other farmers and even to fence installers. We have a situation in Vermont where many retired farmers are renting to farmers -- established farmers as well as those just starting out. Given this law as it reads now would you rent out your land to a farmer knowing you could be sued if they don't make barriers visible day and night?

If safety is truly the goal of this law, and not making suits against landowners for personal injury much much easier, VTFB respectfully requests that the law be revised to eliminate any private right of action against the property owner, a person leasing the land or farm or any fence or barrier installer and be replaced by a modest civil penalty **as intended by the sponsor**. We would also ask that all definitions be re-defined to be clear, and unequivocal, allowing for no confusion. Finally we would ask that for this bill and in future when a bill affects fencing in Vermont, that the Agency of Agriculture Food and Markets be allowed to weigh in and testify as to its effects on farming practices. As written this bill will be incredibly challenging and place an unfair economic burden on farmers.