

MEMO TO: House Committee on Environment

FROM: Bradley E. Showman, Office of Legislative Counsel

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SUBJECT: Posting Laws Comparison with States That Have a Constitutional Right to Hunt

The Vermont Constitution provides the right to hunt. This right to hunt includes the right to hunt on private property that is not enclosed. If a private property owner wants to prohibit hunting or permit hunting by permission only on their property, the property owner must post signs that explicitly state that hunting is prohibited or by permission only.

The following are a sampling of states that have a constitutional right to hunt and that permit property owners to post their land against hunting using paint.

In summary, other state constitutions do not permit hunting on private property in the same manner as the Vermont Constitution. Each state permits property owners to exclude trespassers and hunters from their property and each state does so slightly differently. Some states have statutes that specify posting against hunting in particular and some states have posting requirements against trespass generally that also applies to hunting.

### **Arkansas**

By a voter-approved amendment in 2010, the Arkansas Constitution provides a right to “hunt, fish, trap, and harvest wildlife” in the state. The amendment does not explicitly give individuals the right to hunt on private property. The amendment did not alter, repeal, or modify “[a]ny common law or statute relating to trespass, private property rights, eminent domain, public ownership of property, or any law concerning firearms unrelated to hunting.” Ark. Const. Amend. 88, §1.

Property owners in Arkansas may post their land against hunting with signs, paint markings, or by enclosing the property with a fence. Ark. Code Ann. § 18-11-404. The signs or paint markings can be no more than 100 feet apart and posted or painted at each point of entry. *Id.* The color of the paint markings is not defined by statute. *See id.*

To hunt on posted property, hunters must obtain written permission from the property owner. Ark. Code Ann. § 18-11-403. Knowingly entering posted property without written consent is a misdemeanor. *Id.*

Arkansas also prohibits criminal trespass. A person commits criminal trespass if the person enters or remains unlawfully on another person’s property. Ark. Code Ann. § 5-39-203. The statute does not explicitly require that a property owner post no trespassing signs. *See id.* “‘Enter or remain unlawfully’ means to enter or remain in or upon

premises when not licensed or privileged to enter or remain in or upon the premises.” Ark. Code Ann. § 5-39-101.

### **Kansas**

By a voter-approved amendment in 2016, the Kansas Constitution provides a right to “hunt, fish, and trap” in the state. The amendment does not explicitly give individuals the right to hunt on private property. The amendment “shall not be construed to modify any provision of law relating to trespass, property rights or water resources.” Kan. Const. Amend. 21, §1.

In Kansas, it is a crime to hunt on private property without first obtaining the owner’s permission. Kan. Stat. Ann. § 21-5810. Criminal trespass is a separate crime. Kan. Stat. Ann. § 21-5808. A person commits criminal trespass in Kansas if the person is not authorized to enter the property and the person remains there despite an order from the owner, a restraining order, or the property is posted as provided in K.S.A. § 31-1013 or other reasonable manner likely to be noticed by an intruder.

Property owners may post signs stating that hunting is permitted by written permission only. Kan. Stat. Ann. § 32-1013. Property owners may also mark their property with purple paint markings. *Id.* Land posted with purple paint markings is considered posted by written permission only. *Id.* The distance between postings for either signs or paint is not defined by statute.

### **Montana**

By a voter-approved amendment in 2004, the Montana Constitution provides “the opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.” Mont. Const. art. IX, §7. The amendment explicitly states that individuals do not have the right to trespass on private property.

Montana’s posting law concerns trespass generally and that law also applies to hunting. Property owners in Montana must post notice to deny others entry onto the property owner’s private land. Mont. Code Ann. § 45-6-201. Property owners can post either notice signs or use fluorescent orange paint. *Id.*

Paintings must be 50 square inches and, except when metal fenceposts are used, the entire post must be painted. *Id.* Signs or paintings must be placed at “each outer gate and normal point of access to the property.” *Id.*

The statute also requires the Montana Department of Fish, Wildlife and Parks to educate the public about these posting provisions. *Id.*

### **Idaho**

By a voter-approved amendment in 2012, the Idaho Constitution provides a right to “hunt, fish, and trap” in the state. The amendment does not explicitly give individuals the

right to hunt on private property. The amendment provides that “the rights set forth herein do not create a right to trespass on private property . . . [and] shall not lead to the diminution of other private rights.” Idaho Const. article 1, §23.

Until 2018, Idaho had separate posting statutes for posting against hunting and criminal trespass. Idaho Code Ann. § 36-1603; Idaho Code Ann. § 18-7008. The posting requirements were the same in both statutes and remain so today.

Prior to amendment, the statute regarding posting against hunting prohibited all hunting on private property without the owner’s permission, even if the property was not posted. Idaho Code Ann. § 36-1603 (2017). Now, private property owners must post their land to prohibit hunting. Idaho Code Ann. § 36-1603. The statute regarding posting against hunting was also amended to refer to the posting requirements listed in the criminal trespass statute. *Id.*

Today, property owners in Idaho can post their land against hunting or trespass generally with a sign or with orange paint. Idaho Code Ann. § 18-7008. To post by paint, the painting must be 100 square inches or a minimum of 18 inches of the top of a metal fence post. *Id.* Signs and paint markings must be placed every 660 feet and at points of access. *Id.*

### **Other findings**

There are 24 states with a constitutional right to hunt. Of those, 16 permit posting against hunting by using paint markings. Of the states that permit posting with paint markings, two of them require notice signs in addition to the paint markings.