

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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Legislative Document

No. 1764

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H. P. 1333

House of Representatives, April 2, 1975

On motion of Mr. Cote of Lewiston, referred to the Committee on Legal Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Lynch of Livermore Falls.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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AN ACT to Deter Trespass in Forest Practices.

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Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 14 MRSA § 7552, 2nd sentence is amended to read:

If said acts are committed willfully or knowingly, the defendant is liable to the owner in double damages, except that triple damages shall be imposed for trespasses against timber, as hereinafter provided in this section.

Sec. 2. 14 MRSA § 7552 is amended by adding at the end the following:

1. Filing notice of cutting operation. Before any person commences a commercial cutting operation, he must file a notice of such operation with the clerk of the municipality in which such operation shall take place or with a forest ranger or forester of the State Bureau of Forestry if the cutting operation is to take place in the unorganized territories.

A. Contents of notice. The notice shall set forth the names of the operator and landowner, the approximate acreage to be cut, its approximate location, the expected beginning date and duration of the operation and such other information relating to the proposed operations as the Director of the Bureau of Forestry may require.

B. Notice form. The Director of the Bureau of Forestry shall develop a form to be used for the notice and make it available conveniently and at offices of municipal clerks and forest rangers and foresters.

C. Notice fee. The operator shall pay a \$1.00 fee to the clerk, forester or forest ranger upon the filing of the notice.

D. Time of filing notice. The notice shall be filed prior to entering the land to arrange for the beginning of the operation.

E. Scope of notice requirement. The notice requirement applies to any commercial operation, whether it be for firewood, pulpwood or saw timber, except that it does not apply to routine cultivated Christmas tree operations. The notice requirement does not apply to a person cutting on his own land for his own firewood or for other uses of the timber on his own property.

F. Notices available to public. All notices on file at the municipal clerk's office or at the office of a forest ranger or forester shall be available for inspection by any member of the public.

2. Burden of proof in subsequent legal action when notice not filed. In any trespass action brought by a landowner against an operator based on an operation for which a notice was not filed as required by this section, if the plaintiff alleges in good faith on a verified complaint that the operation constitutes a trespass against his property and submits credible evidence, such as a deed and testimony regarding the boundaries of his land to demonstrate his title thereto, the burden of going forward with evidence that the land was not that of the plaintiff shall be on the defendant operator. If the defendant operator fails to come forward with evidence sufficient to rebut that of the plaintiff, the plaintiff shall be deemed to have proven his title.

3. Damages to be assessed. If in any legal action for trespass brought against an operator based on an operation for which a notice was not filed as required by this section, the court finds that a trespass has been committed, the defendant shall be liable to the owner for triple damages.

Sec. 3. Appropriation. There is appropriated from the General Fund to the Department of Conservation, Bureau of Forestry, the sum of \$5,000 to carry out the purposes of this Act. The breakdown shall be as follows and any funds not expended shall not lapse, but shall remain a continuing account:

	1975-76
CONSERVATION, DEPARTMENT OF	
Bureau of Forestry	
All Other	\$5,000

STATEMENT OF FACT

In recent years, the long-standing problem of deliberate timber trespasses in forest practices continues unabated. The present deterrents, including the imposition of double damages for a willful or knowing trespass in a civil action, and a punishment by fine not to exceed \$100 and imprisonment not to exceed 2 months in a criminal action under the Revised Statutes, Title 17, section 3856, have not proven sufficient to deter this illegal activity which

imposes great hardship on many landowners. Under present law, it is difficult to prove intent sufficient to obtain a criminal conviction or the imposition of double damages. Equally important, in many instances a landowner cannot prove the precise location of his boundaries without incurring the exorbitant expense of having a survey conducted.

The bill remedies these deficiencies in the present law regarding timber trespass. By requiring a notice and imposing substantial burdens or disadvantages on those who choose to defy the law requiring notice, the law at once offers inducements to operators to ascertain with reasonable certainty that they are legally entitled to carry on the operation. At the same time, it gives landowners the opportunity to ascertain the pending operations in the vicinity of their land and to take precautions, such as placing boundary markers or other notices on their boundaries, sufficient to advise the cutter of a pending trespass.