

MAINE STATE LEGISLATURE

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R. of S.

L.D. 1500

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JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1065, L.D. 1500, Bill, "An Act to Reduce Theft in the Forest Products Industry"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 14 MRSA §7551-A, as enacted by PL 1983, c. 362, §1, is repealed.

Sec. 2. 14 MRSA §7552, as amended by PL 1989, c. 555, §13, is repealed and the following enacted in its place:

§7552. Injury to lands or property

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agricultural product" means crops produced and livestock raised as a result of cultivating the soil and harvesting. Agricultural products include, but are not limited to, vegetables, fruit, forages, grain, nuts, berries, flowers, ornamental plants, nursery crops, milk, dairy products, eggs, domestic livestock and other products in varying degrees of preparation. Agricultural products also include the soil amendments and by-products that are used in cultivation.

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2 B. "Christmas tree" and "evergreen boughs" have the same
meanings as provided in Title 12, section 8841.

4 C. "Forest products" means logs, pulpwood, veneer, bolt
wood, wood chips, stud wood, poles, pilings, biomass, fuel
6 wood, Christmas trees, maple syrup, nursery products used
8 for ornamental purposes, wreaths, evergreen boughs or cones
or other seed products.

10 D. When there is damage to public property, the term
12 "owner" may include a suitable official authorized to act on
behalf of the public entity.

14 For damage to a monument or mark under subsection 2,
16 paragraph C, "owner" may include the entity for whose
benefit the monument or mark is maintained.

18 E. "Professional services" may include:

20 (1) The damage estimate of a licensed professional
22 forester;

24 (2) A boundary survey;

26 (3) A title opinion; and

28 (4) Attorney's fees for preparing the claim and
bringing a court action.

30 2. Prohibitions. Without permission of the owner a person
32 may not:

34 A. Cut down, destroy, damage or carry away any forest
product, ornamental or fruit tree, agricultural product,
36 stones, gravel, ore, goods or property of any kind from land
not that person's own;

38 B. Damage or throw down any fence, bar or gate, or leave a
40 gate open, or break glass or do other damage to any
structure on property not that person's own; or

42 C. Disturb, remove or destroy any lawfully established
transit point, reference point, stake, plug, hub,
44 guardstake, bench mark, pipe, iron, concrete post, stone
46 post or other monument of any railroad, highway, public
utility or other engineering location or survey or any such
48 monument marking the bounds of public or private property.

50 3. Measure of damages. Paragraphs A and B govern the
measurement of damages resulting from a violation of subsection 2.

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2 A. When agricultural or forest products have been destroyed
4 or carried away, the owner's damages may be measured either
6 by the value of the lost products themselves or by the
 diminution in value of the real estate as a whole resulting
 from the violation.

8 B. For lost trees, the owner may claim in lieu of market
10 value the forfeiture amounts in Title 17, section 2510,
12 subsection 2. In addition, the owner's damages may include
 the costs for regeneration of the stand in accordance with
 Title 12, section 8869.

14 4. Damages recoverable. Damages are recoverable as follows.

16 A. A person who negligently or without fault violates
18 subsection 2 is liable to the owner for 2 times the owner's
 damages as measured under subsection 3.

20 B. A person who intentionally or knowingly violates
22 subsection 2 is liable to the owner for 3 times the owner's
 damages as measured under subsection 3.

24 5. Costs and fees. In addition to damages, interest and
26 costs, the owner may also recover from the person who violates
28 subsection 2 the reasonable costs of professional services
30 necessary for determining damages and proving the claim, provided
 that the person first has written notice or actual knowledge that
 a claim is being asserted.

32 The amount awarded for professional services may not exceed 50%
34 of the damages recovered pursuant to subsection 4 plus interest
 on the damages. Interest may be assessed after service of a
 notice of claim pursuant to section 1602.

36 6. Offer of settlement. At any time after the violation
38 but more than 10 days before trial begins, the person who
40 violated subsection 2 may make a written offer to settle the
 owner's claim.

42 A. For such an offer to be valid, it must by its terms
44 remain open for at least 10 days and the owner must first be
 provided with liability and damage information that is:

46 (1) Available to the person and not reasonably
 available to the owner; and

48 (2) Necessary or pertinent to an evaluation of the
50 owner's claim.

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2 B. Notwithstanding the Maine Rules of Civil Procedure, Rule
3 68, any offer not paid within 10 days of its acceptance is
4 void for purposes of this subsection but may be specifically
5 enforced by the owner, if the owner so elects.

6 C. If the owner does not accept the offer, the owner may
7 not recover any interest, costs or professional fees
8 incurred following the date of the offer unless the owner
9 later proves that the value of the claim, at the time the
10 offer was made, exceeded the amount of the offer.

11 7. Issues of fact. The court sitting without a jury shall
12 resolve issues of fact arising under subsections 5 and 6.

13 **Sec. 3. 14 MRSA §7552-A**, as repealed and replaced by PL 1977,
14 c. 313, §2, is amended to read:

15 **§7552-A. Land on which 10 acres or more of wood is to be cut**

16 Any person who authorizes the cutting of timber or wood on
17 his the person's own property, when the cutting involves an area
18 of 10 or more acres, shall clearly mark any property lines which
19 that are within 200 feet of the area to be cut. If any such
20 person fails to clearly mark such property lines and if the
21 person or persons who are authorized to cut then cut timber or
22 wood on abutting land without the authorization of the owner of
23 that land, the person who failed to mark his the person's
24 property lines ~~shall-be~~ is liable in a civil action, in double
25 damages, to that owner of the abutting land. ~~Such~~ These damages
26 ~~shall-be~~ are in addition to any damages to which the owner of the
27 abutting land may be entitled ~~to~~ under section 7552.

28 **Sec. 4. 14 MRSA §§7553, 7554 and 7555** are repealed.

29 **Sec. 5. 17 MRSA §2510, sub-§2**, as enacted by PL 1981, c. 355,
30 is amended to read:

31 **2. Forfeitures.** The following forfeitures may be adjudged
32 for each tree which over 2 inches in diameter that has been cut
33 or felled:

34 A. If the tree is no more than 6 inches in diameter, a
35 forfeiture of \$25;

36 B. If the tree is over 6 and up to 10 inches in diameter, a
37 forfeiture of \$50;

38 C. If the tree is over 10 and up to 14 inches in diameter,
39 a forfeiture of \$75;

40

D. If the tree is over 14 and up to 18 inches in diameter, a forfeiture of \$100;

E. If the tree is over 18 and up to 22 inches in diameter, a forfeiture of \$125; and

F. If the tree is greater than 22 inches in diameter, a forfeiture of \$150.

Sec. 6. 17 MRSA §9564, sub-§7, as enacted by PL 1981, c. 43, is amended to read:

7. Damages. Any complaint which that either seeks damages for the wrongful removal of a building or structure or challenges the award of costs must be filed no later than 30 days from the date of the judgment or order which that is the subject of the appeal. The damages which that may be awarded for wrongful demolition are limited to the actual value of the structure at the time of its removal. The provisions of Title 14, section 7552 and ~~section 7555~~ do not apply. If the municipality should prevail, the court may award it its costs in defending any appeal which may include, but are not limited to, reasonable attorney's fees.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

This bill may increase the number of civil suits filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.'

STATEMENT OF FACT

This amendment replaces the bill. It revises the standards and procedures by which a property owner may measure and recover damages from a person who destroys or damages or removes trees, agricultural products, or survey markers. Several sections of current law are repealed and consolidated into the repealed and replaced Maine Revised Statutes, Title 14, section 7552.

Significant changes from current law are as follows.

1. The property owner may measure damages as the value of the product lost or the resulting diminution in value of the real estate. If trees are lost, the owner may claim as damages the

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2 forfeiture values, based on the size of each tree, in Title 17,
section 2510, subsection 2. In addition, the owner's damages may
4 include the costs of regeneration as provided in Title 12,
section 8869.

6 2. Once the damages have been measured, they are multiplied
by a factor determined by the intent or mental state of the
8 violator. If the violation was without fault or negligent, the
measure of damages is multiplied by 2 to reach the amount for
10 which the violator is liable. If the person acted intentionally
or knowingly, the measure of damages is multiplied by 3.

12 3. In addition to costs and interest, the violator may also
14 be liable for the reasonable costs of professional services
necessary for determining damages and proving the claim.
16 "Professional services" includes the damage estimate of a
professional forester, a boundary survey, a title opinion and
18 attorney's fees. Costs of professional services may not exceed
50% of the damages assessed under Title 14, section 7552,
20 subsection 4 plus interest on the damages.

22 4. The violator may make an offer of settlement at least 10
days before going to trial. The offer must remain open at least
24 10 days and the owner must be provided with liability and damage
information. If not paid within 10 days of its acceptance, the
26 offer is void. If the owner does not accept the offer, the owner
may not collect interest, costs or professional fees incurred
28 after the date of the offer if the owner can not show that the
claim was worth more than the offer at the time the offer was
30 made.

32 The amendment also adds a fiscal note to the bill.