

MAINE STATE LEGISLATURE

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M
R.O.S.

L.D. 1708

DATE: 3/11/96

(Filing No. H- 753)

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JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1246, L.D. 1708, Bill, "An Act to Amend the Laws Relating to Recovery for Property Damage"

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-B is enacted to read:

§7551-B. Trespass damages

1. Prohibition. A person who intentionally enters the land of another without permission and causes damage to property is liable to the owner in a civil action if the person:

A. Damages or throws down any fence, bar or gate; leaves a gate open; breaks glass; damages any road, drainage ditch, culvert, bridge, sign or paint marking; or does other damage to any structure on property not that person's own; or

B. Throws, drops, deposits, discards, dumps or otherwise disposes of litter, as defined in Title 17, section 2263, subsection 2, in any manner or amount, on property not that person's own.

2. Liability. If the damage to the property is caused intentionally, the person is liable to the owner for 2 times the owner's actual damages plus any additional costs recoverable under subsection 3, paragraphs B and C. If the damage to the property is not caused intentionally, the person is liable to the owner for the owner's actual damages plus any additional costs recoverable under subsection 3, paragraphs B and C.

COMMITTEE AMENDMENT

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COMMITTEE AMENDMENT "A" to H.P. 1246, L.D. 1708

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3. Damages recoverable. The owner's damages include:

A. Actual damages, as measured by subsection 4;

B. Costs the owner may incur if the damage results in a violation of any federal, state or local law or ordinance and, as a result, the owner becomes the subject of an enforcement proceeding. These costs include attorney's fees, costs and the value of the owner's time spent on involvement in the enforcement proceeding; and

C. Reasonable attorney's fees for preparing the claim and bringing the court action under this section plus costs.

4. Measure of damages. For damage to property under subsection 1, paragraph A, the owner's damages may be measured either by the replacement value of the damaged property or by the cost of repairing the damaged property. For damages for disposing of litter, the owner's damages include the direct costs associated with properly disposing of the litter, including obtaining permits, and the costs associated with any site remediation work undertaken as a result of the litter.

5. Other actions barred. A recovery from a defendant under this section bars an action to recover damages under section 7552 from that defendant for the same specific damage.

Sec. 2. 14 MRSA §7552, as repealed and replaced by PL 1995, c. 450, §2, is amended by repealing and replacing the headnote to read:

§7552. Injury to land, forest products or agricultural products

Sec. 3. 14 MRSA §7552, sub-§§2, 3 and 4, as enacted by PL 1995, c. 450, §2, are amended to read:

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

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

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

C. Disturb, remove or destroy any lawfully established transit point, reference point, stake, plug, hub,

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2 guardstake, bench mark, pipe, iron, concrete post, stone
post or other monument of any railroad, highway, public
4 utility or other engineering location or survey or any such
monument marking the bounds of public or private property.

6 **3. Measure of damages.** Paragraphs--A--and--B--govern This
subsection governs the measurement of damages resulting from a
8 violation of subsection 2.

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

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

22 C. When a monument or marker has been disturbed, removed or
destroyed, the owner's damages may include the cost of
24 replacing a monument or marker by a licensed surveyor.

26 **4. Damages recoverable.** Damages are recoverable as follows.

28 A. A person who negligently or without fault violates
subsection 2 is liable to the owner for 2 times the owner's
30 damages as measured under subsection 3 or \$250, whichever is
greater.

32 B. A person who intentionally or knowingly violates
34 subsection 2 is liable to the owner for 3 times the owner's
damages as measured under subsection 3 or \$500, whichever is
36 greater.

38 C. In addition to the damages recoverable under paragraphs
A and B, a person who violates subsection 2 is also liable
40 to the owner for the costs the owner may incur if the
violation results in a violation of any federal, state or
42 local law or ordinance and, as a result, the owner becomes
the subject of an enforcement proceeding. These costs
44 include attorney's fees, costs and the value of the owner's
time spent on involvement in the enforcement proceeding.

46 **Sec. 4. 14 MRSA §7552, sub-§8** is enacted to read:
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2 8. Other actions barred. A recovery from a defendant under
3 this section bars an action to recover damages under section
4 7551-B from that defendant for the same specific damage.'

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

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9 **FISCAL NOTE**

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

18
19 **STATEMENT OF FACT**

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21 This amendment replaces the original bill and restructures
22 the proposal and current law so that damage to forest products,
23 agricultural products and survey markers is addressed in a
24 different section than other types of damage to property.

26 In cases in which agricultural products, forest products or
27 survey markers are damaged, the amendment includes the same
28 provisions as in the original bill: It provides a minimum damage
29 award of \$250 for negligent damage and \$500 for intentional
30 damage and it permits the recovery of costs associated with an
31 enforcement proceeding if the damage results in a violation of
32 any federal, state or local law or ordinance. The amendment also
33 clarifies that the landowner may recover the cost of a new
34 boundary survey if a boundary marker is destroyed or removed.

36 In cases involving other types of damages, the bill expands
37 on current law to provide that a person who trespasses onto
38 another's land is liable to the owner for damages caused and
39 attorney's fees. The amendment includes littering and dumping as
40 a type of damage for which a trespasser is liable, and specifies
41 the mechanism for determining the amount of damages incurred. If
42 the damage was caused intentionally, the trespasser is liable for
43 2 times the actual damages plus attorney's fees. The owner may
44 also recover the costs associated with an enforcement proceeding
45 if the damage results in a violation of any federal, state or
46 local law or ordinance. The amendment also prohibits recovery
47 under both provisions for the same specific damage.

48 This amendment also adds a fiscal note.