

# MAINE STATE LEGISLATURE

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DATE: April 11, 1997

(Filing No. S- 103)

JUDICIARY

Reported by: Senator Longley

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STATE OF MAINE
SENATE
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S.P. 118, L.D. 397, Bill, "An Act to Change the Burden of Proof for Timber Trespass and Timber Theft Violations"

Amend the bill by inserting after section 2 the following:

Sec. 3. 17 MRSA §2510, sub-§§4 and 5 are enacted to read:

4. Restitution. The court shall inquire of the prosecutor or the owner of the property on which the tree was cut down or felled the extent of the owner's financial loss. With the owner's consent, the court shall order restitution when appropriate on the basis of an adequate factual foundation. The order of restitution must designate the amount of restitution to be paid and the person or persons to whom the restitution must be paid. Restitution ordered under this subsection is in addition to any forfeitures adjudged under subsection 2.

Any restitution ordered and paid must be deducted from the amount of any judgment awarded in a civil action brought by the owner against the offender based on the same facts.

5. Liability for conduct of another. A person commits the civil violation in subsection 1 even if the person did not personally cut down or fell the tree if the person is legally accountable for the conduct of another person who violates subsection 1. A person is legally accountable for the conduct of another person if:

A. The person causes another person to violate subsection 1; or

SP 2

2 B. The person solicits another person to commit the civil  
3 violation or aids, agrees to aid or attempts to aid another  
4 person in planning or committing the civil violation.'

6 Further amend the bill by inserting at the end before the  
7 summary the following:

8

**FISCAL NOTE**

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

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**SUMMARY**

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21 This amendment adds to the discretion of the court the  
22 authority to order restitution in timber theft cases. The  
23 restitution is paid to the owner of the property on which the  
24 trees were illegally cut. As in the criminal restitution  
25 statutes, the court must inquire of the prosecutor or the victim,  
26 in this case the owner, about the extent of the owner's financial  
27 loss. The court may then order the person who is adjudicated as  
28 having committed the civil violation of timber theft to pay  
29 appropriate restitution. The determination of appropriate  
30 restitution must be based on an adequate factual foundation, just  
31 as when restitution is ordered in criminal cases. The court may  
32 not order restitution without the consent of the owner.  
33 Restitution is in addition to the civil forfeitures authorized by  
34 statute. Any restitution the owner receives from the successful  
35 prosecution of civil timber theft must be deducted from a  
36 judgment the owner receives in a civil action brought by the  
37 owner against the same offender on the same set of facts.

38

39 This amendment imposes liability for the civil violation on  
40 persons who did not personally cut down or fell the trees, but  
41 who are legally accountable for the conduct of the person who did  
42 the cutting. This concept, often referred to as accomplice  
43 liability, is borrowed from the Maine Criminal Code, which  
44 specifically provides for criminal liability for the conduct of  
45 another. A person commits the civil violation of timber theft if  
46 the person causes another person to cut down or fell trees in  
47 violation of the law or if the person solicits, assists or agrees  
48 to assist another person to cut down or fell trees in violation  
of the law.