

MAINE STATE LEGISLATURE

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L.D. 1759

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DATE: 3-23-06

(Filing No. S-517)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
SENATE
122ND LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 676, L.D. 1759, Bill, "An Act To Strengthen Maine's Timber Theft Laws"

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

Sec. 1. 17 MRSA §2512 is enacted to read:

§2512. Failure to pay for trees harvested

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

A. "Forest products" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass fuel wood, fuel wood or other products commonly known as forest products, but does not include Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, bough material, cones or other seed crops.

B. "Handling or processing facility" means sawmills; bolter mills; shingle mills; veneer mills; fence pole and piling making operations; pulp and paper mills; wafer board, particle board and plywood mills; whole tree chippers; commercial fuel wood processors; custom wood processing mills; and log yards established to accumulate logs awaiting shipment to these facilities.

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2 C. "Harvest operation" means the harvest of forest products
3 on land in a single municipality or township. Land
4 harvested need not be contiguous, and more than one
5 harvester may work a harvest operation.

6
7 2. Payment required within 45 days. Absent a written
8 contract that indicates different payment terms between the
9 landowner and the person conducting a harvest operation, the
10 person conducting the harvest operation shall provide to the
11 landowner full payment for each truckload of harvested forest
12 products transported to a handling or processing facility within
13 45 days of delivery to the handling or processing facility. In
14 accordance with Title 10, section 2364-A, subsection 2, paragraph
15 G, the person conducting the harvest operation shall provide to
16 the landowner a copy of the measurement tally sheet or stumpage
17 sheet for each truckload of forest products transported to a
18 handling or processing facility when the person conducting the
19 harvest operation pays the landowner.

20 3. Penalties. The following penalties apply.

21
22 A. A person who violates subsection 2 commits a civil
23 violation for which a fine of not more than \$1,000 may be
24 adjudged.

25
26 B. A person who violates subsection 2 after having been
27 adjudicated as having violated subsection 2 within the
28 previous 5 years commits a civil violation for which a fine
29 of not more than \$2,000 may be adjudged.

30
31 C. A person who violates subsection 2 after having been
32 adjudicated as having committed 2 or more civil violations
33 under subsection 2 within the previous 5 years commits a
34 Class E crime. Violation of this paragraph is a strict
35 liability crime as defined in Title 17-A, section 34,
36 subsection 4-A.

37
38 D. In addition to any other penalties imposed in this
39 subsection, the court may order a person adjudicated as
40 having violated this section to provide upon request to any
41 forest ranger of the Department of Conservation, Bureau of
42 Forestry copies of measurement tally sheets for subsequent
43 harvest operations being conducted by the violator for a
44 period not to exceed one year.

45
46 4. Restitution. In addition to any penalties imposed
47 pursuant to subsection 3 and, when appropriate, in accordance
48 with the requirements of Title 17-A, chapter 54, the court shall
49 order restitution to the landowner on the basis of an adequate
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2 factual foundation. The amount of restitution may be determined
3 by using the measured volume of the harvested forest products as
4 listed on the measurement tally sheet or stumpage sheet in
5 accordance with Title 10, section 2364-A, subsection 2 and by the
6 terms of the sales contract according to the measurement
7 procedures set forth in Title 10, section 2363-A that are
8 applicable to a sale of wood.

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

12 **5. Exemptions.** The following are exempt from this section:

13 A. The Department of Transportation in the performance of
14 activities under Title 23, section 701;

15 B. Public utilities in maintaining adequate facilities in
16 emergencies in compliance with Title 35-A, section 301; and

17 C. Municipal employees, persons contracting with a
18 municipality or other legitimate agents of a municipality
19 acting within the course and scope of their employment or
20 performing volunteer work for the municipality removing
21 street trees or fallen trees or in emergencies.

22 **Sec. 2. Report from Department of Conservation.** By March 1,
23 2008, the Commissioner of Conservation shall report to the joint
24 standing committee of the Legislature having jurisdiction over
25 criminal justice matters regarding the number of cases prosecuted
26 and the results of those cases under the Maine Revised Statutes,
27 Title 17, section 2512 and the impact of the new penalties in
28 deterring timber theft.'

29 **SUMMARY**

30 This amendment replaces the bill and does the following:

31 1. It clarifies definition provisions;

32 2. It specifies that, absent a written contract to the
33 contrary, the person conducting the harvest operation shall
34 provide the landowner with full payment for each truckload of
35 harvested forest products transported to a handling or processing
36 facility within 45 days of delivery;

37 3. It redrafts the penalty section to establish a fine of
38 not more than \$1,000 for the first violation, a fine of not more
39 than \$2,000 for the second violation, and a fine of not more
40 than \$3,000 for the third violation.

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2 than \$2,000 for a 2nd violation within a 5-year period and a
Class E crime if a person commits a violation 3 or more times
within a 5-year period;

4

6 4. It creates a restitution provision, which directs the
court in accordance with the requirements of the Maine Revised
Statutes, Title 17-A, chapter 54, when appropriate, to order
8 restitution on the basis of an adequate factual foundation. The
amount of restitution may be determined by using the measured
10 volume of the harvested forest products as listed on the
measurement tally sheet or stumpage sheet in accordance with
12 Title 10, section 2364-A, subsection 2 and by the terms of the
sales contract according to the measurement procedures set forth
14 in Title 10, section 2363-A that are applicable to a sale of
wood; and

16

18 5. It directs the Commissioner of Conservation to report by
March 1, 2008 to the joint standing committee of the Legislature
having jurisdiction over criminal justice matters, observations
20 regarding the effectiveness of the new penalties in deterring
timber theft.

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FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



122nd MAINE LEGISLATURE

LD 1759

LR 2729(02)

An Act to Strengthen Maine's Timber Theft Laws

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes a new civil violation and Class E crime.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department.

The collection of additional fines may increase General Fund revenue by minor amounts.