

House Calendar

Friday, February 2, 2024

31st DAY OF THE ADJOURNED SESSION

House Convenes at 9:30 A.M.

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ORDERS OF THE DAY

NOTICE CALENDAR

Favorable with Amendment

H. 614

An act relating to land improvement fraud and timber trespass

Rep. Lipsky of Stowe, for the Committee on Agriculture, Food Resiliency, and Forestry, recommends the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2029 is amended to read:

§ 2029. HOME IMPROVEMENT AND LAND IMPROVEMENT FRAUD

(a) As used in this section, ~~“home:~~

(1) “Home improvement” includes means the fixing, replacing, remodeling, removing, renovation, alteration, conversion, improvement, demolition, or rehabilitation of or addition to any building ~~or land~~, or any portion thereof, including roofs, that is used or designed to be used as a residence or dwelling unit. ~~Home improvement shall include~~

(2)(A) “Land improvement” means:

(i) the construction, replacement, installation, paving, or improvement of driveways, ~~roofs,~~ and sidewalks, and trails, roads, or other landscape features;

(ii) site work, including grading, excavation, landscape irrigation, site utility installation, site preparation, and other construction work that is not part of a building on a parcel;

(iii) the limbing, pruning, and cutting, or removal of trees or shrubbery and other improvements to structures or upon land that is adjacent to a dwelling house; and

(iv) forestry operations, as that term is defined in 10 V.S.A. § 2602, including the construction of trails, roads, and structures associated with forestry operations and the transportation off-site of trees, shrubs, or timber.

(B) “Land improvement” includes activities made in connection with a residence or dwelling or those activities not made in connection with a residence or dwelling.

(b) A person commits the offense of home improvement or land improvement fraud when ~~he or she~~ the person enters into a contract or agreement, written or oral, for ~~\$500.00~~ \$1,000.00 or more, with an owner for home improvement or land improvement, or into several contracts or agreements for \$2,500.00 or more in the aggregate, with more than one owner for home improvement or land improvement, and ~~he or she~~ the person knowingly:

(1)(A) fails to perform the contract or agreement, in whole or in part; and

(B) when the owner requests performance, payment, or a refund of payment made, the person fails to either:

(i) refund the payment; ~~or~~

(ii) make and comply with a definite plan for completion of the work that is agreed to by the owner; or

(iii) make the payment;

(2) misrepresents a material fact relating to the terms of the contract or agreement or to the condition of any portion of the property involved;

(3) uses or employs any unfair or deceptive act or practice in order to induce, encourage, or solicit such person to enter into any contract or agreement or to modify the terms of the original contract or agreement; or

(4) when there is a declared state of emergency, charges for goods or services related to the emergency a price that exceeds two times the average price for the goods or services and the increase is not attributable to the additional costs incurred in connection with providing those goods or services.

(c) Whenever a person is convicted of home improvement or land improvement fraud or of fraudulent acts related to home improvement or land improvement:

(1) the person shall notify the Office of the Attorney General;

(2) the court shall notify the Office of the Attorney General; and

(3) the Office of the Attorney General shall place the person's name on the Home Improvement and Land Improvement Fraud Registry.

(d)(1) A person who violates subsection (b) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both, if the loss to a single consumer is less than \$1,000.00.

(2) A person who is convicted of a second or subsequent violation of subdivision (1) of this subsection shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.

(3) A person who violates subsection (b) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, if:

(A) the loss to a single consumer is \$1,000.00 or more; or

(B) the loss to more than one consumer is \$2,500.00 or more in the aggregate.

(4) A person who is convicted of a second or subsequent violation of subdivision (3) of this subsection shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(5) A person who violates subsection (c) or (e) of this section shall be imprisoned for not more than two years or fined not more than \$1,000.00, or both.

(e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of this section, or convicted of fraudulent acts related to home improvement or land improvement, may engage in home improvement or land improvement activities for compensation only if:

(1) the work is for a company or individual engaged in home improvement or land improvement activities and the company has not previously committed a violation under this section, the person has no relation to the company personally or in its corporate form, and the person first notifies the company or individual of the conviction and notifies the Office of the Attorney General of the person's current address and telephone number; the name, address, and telephone number of the company or individual for whom the person is going to work; and the date on which the person will start working for the company or individual; or

(2) the person notifies the Office of the Attorney General of the intent to engage in home improvement or land improvement activities, and that the person has filed a surety bond or an irrevocable letter of credit with the Office in an amount of not less than ~~\$50,000.00~~ \$250,000.00, and pays on a regular basis all fees associated with maintaining such bond or letter of credit.

(f) The Office of the Attorney General shall release the letter of credit at such time when:

(1) any claims against the person relating to home improvement or land improvement fraud have been paid;

(2) there are no pending actions or claims against the person for home improvement or land improvement fraud; and

(3) the person has not been engaged in home improvement or land improvement activities for at least six years and has signed an affidavit so attesting.

(g) The Attorney General, a State's Attorney, or a law enforcement officer may, according to the requirements of 18 V.S.A. chapter 84, subchapter 2, seize from a person alleged to have committed home improvement or land improvement fraud under this section property that was used in the commission of the alleged fraud.

(h) A person convicted of home improvement or land improvement fraud is prohibited from applying for or receiving State grants or from contracting, directly or indirectly, with the State or any of its subdivisions for a period of up to three years following the date of the conviction, as determined by the Commissioner of Buildings and General Services.

(i) A person subject to the financial surety requirements of section 3605 of this title for timber trespass shall not engage in land improvement activities unless the person has satisfied the financial surety requirements for timber trespass.

Sec. 2. 13 V.S.A. §§ 3605 and 3605a are added to read:

§ 3605. FINANCIAL SURETY REQUIRED FOR CONTINUED TIMBER;
HARVESTING ACTIVITIES

(a) Under one or more of the following circumstances, a person shall not engage in timber harvesting activities for compensation unless the person satisfies the conditions of subsection (b) of this section:

(1) the person was convicted of a second or subsequent violation of timber trespass under section 3606a of this title and has not paid all required fines or restitution;

(2) the person is subject to two or more civil judgements under section 3606 of this title and has not paid all required damages or restitution;

(3) the person is subject to the financial surety requirements of subsection 2029(e) of this title for land improvement fraud; or

(4) the person was convicted of a combination of one or more violations of timber trespass and one or more occurrence of land improvement fraud and has not paid the required fines, damages, or restitution.

(b) A person subject to prohibition under subsection (a) of this section may engage in timber harvesting activities for compensation if:

(1) the work is for a company or individual engaged in timber harvesting activities and the company or individual has not previously committed a violation under this section, the person has no relation to the company personally or in its corporate form, and the person first notifies the company or individual of the conviction or civil judgment and notifies the Office of the Attorney General of the person's current address and telephone number; the name, address, and telephone number of the company or individual for whom the person is going to work; and the date on which the person will start working for the company or individual; or

(2) the person notifies the Office of the Attorney General of the intent to engage in timber harvesting activities, has filed a surety bond or an irrevocable letter of credit with the Office in an amount of not less than \$250,000.00, and pays on a regular basis all fees associated with maintaining such bond or letter of credit.

(c) The Office of the Attorney General shall release the letter of credit at such time when:

(1) any claims against the person relating to timber harvesting activities or land improvement fraud have been paid;

(2) there are no pending actions or claims against the person from the person's timber harvesting activities or land improvement fraud; and

(3) the person has not been engaged in timber harvesting activities for at least six years and has signed an affidavit so attesting.

§ 3605a. SEIZURE; FORFEITURE; DEBARMENT

(a) The Attorney General, a State's Attorney, or a law enforcement officer may, according to the requirements of 18 V.S.A. chapter 84, subchapter 2, seize from a person alleged to have committed timber trespass under this chapter property that was used in the commission of the alleged trespass.

(b) A person convicted of timber trespass is prohibited from applying for or receiving State grants or from contracting, directly or indirectly, with the State or any of its subdivisions for a period of up to three years following the date of the conviction, as determined by the Commissioner of Buildings and General Services.

(c) When a person is convicted of timber trespass under this chapter, the court shall notify the Office of the Attorney General. The Office of the

Attorney General shall place the person's name on the Home Improvement and Land Improvement Fraud Registry.

(d) The Office of the Attorney General shall include as part of the Home Improvement and Land Improvement Fraud Registry educational information for landowners regarding precautions to take or resources to reference prior to entering a contract for land improvement or timber harvesting.

Sec. 3. 18 V.S.A. § 4241 is amended to read:

§ 4241. SCOPE

(a) The following property shall be subject to this subchapter:

(1) All regulated drugs that have been cultivated, manufactured, distributed, compounded, possessed, sold, prescribed, dispensed, or delivered in violation of subchapter 1 of this chapter.

* * *

(7) Any property seized pursuant to 13 V.S.A. § 364.

(8) Any property seized pursuant to 13 V.S.A. § 2029.

(9) Any property seized pursuant to 13 V.S.A. § 3605a.

(b) This subchapter shall apply to property for which forfeiture is sought in connection with:

(1) a violation under chapter 84, subchapter 1 of this title that carries by law a maximum penalty of ~~ten~~ 10 years' incarceration or greater; or

(2) a violation of 13 V.S.A. § 364;

(3) a violation of 13 V.S.A. § 2029; or

(4) a violation of 13 V.S.A. § 3606a or a civil timber trespass action under 13 V.S.A. § 3606.

Sec. 4. 18 V.S.A. § 4243 is amended to read:

§ 4243. JUDICIAL FORFEITURE PROCEDURE

(a) Conviction or agreement required. An asset is subject to forfeiture by judicial determination under section 4241 of this title ~~and~~, 13 V.S.A. § 364, 13 V.S.A. § 2029, or 13 V.S.A. § 3605a if:

(1) a person is convicted of the criminal offense related to the action for forfeiture; or

(2) a person enters into an agreement with the prosecutor under which ~~he or she~~ the person is not charged with a criminal offense related to the action for forfeiture; or

(3) a person is subject to a civil action for timber trespass under 13 V.S.A. § 3606.

* * *

(g) Service of petition. A copy of the petition shall be served on all persons named in the petition as provided for in Rule 4 of the Vermont Rules of Civil Procedure. In addition, the State shall cause notice of the petition to be published in a newspaper of general circulation in the State, as ordered by the court. The petition shall state:

(1) the facts upon which the forfeiture is requested, including a description of the property subject to forfeiture, and, when applicable, the type and quantity of regulated drug involved; and

(2) the names of the apparent owner or owners, lienholders who have properly recorded their interests, and any other person appearing to have an interest; and, in the case of a conveyance, the name of the person holding title, the registered owner, and the make, model, and year of the conveyance.

Sec. 5. 18 V.S.A. § 4247 is amended to read:

§ 4247. DISPOSITION OF PROPERTY

(a) Whenever property is forfeited and delivered to the State Treasurer under this subchapter, the State Treasurer shall, not sooner than 90 days after the date the property is delivered, sell the property at a public sale held under 27 V.S.A. chapter 18, subchapter 7.

(b) The proceeds from the sale of forfeited property shall be used first to offset any costs of selling the property and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses, including animal care expenses related to the underlying violation. Remaining proceeds shall be distributed as follows:

(1)(A) ~~45~~ 60 percent shall be distributed among the following for the purposes of providing training on enforcement:

- (i) the Office of the Attorney General;
- (ii) the Department of State's Attorneys and Sheriffs; and
- (iii) State and local law enforcement agencies.

~~(B) The Agency of Administration is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1) and may only reimburse the prosecutor and law enforcement agencies that participated in the enforcement effort resulting in the forfeiture for expenses incurred, including actual expenses for involved personnel. The proceeds shall be held by the Treasurer until the Agency notifies the Treasurer of the allocation determinations, at which time the Treasurer shall forward the allocated amounts to the appropriate agency's operating funds 15 percent shall be made available to victims of home improvement or land improvement fraud or victims of timber trespass.~~

(2) The remaining ~~55~~ 25 percent shall be deposited in the General Fund.

Sec. 6. REPEAL OF SUNSET; ALLOCATIONS OF FORFEITED
PROCEEDS

2022 Acts and Resolves No. 141, Sec. 3 (repeal of allocation determination of forfeited proceeds) is repealed.

Sec. 7. 18 V.S.A. § 4248(b) is amended to read:

(b) Those records shall be submitted to the State Treasurer and, when applicable to the property subject to forfeiture, shall be open to inspection by all federal and State departments and agencies charged with enforcement of federal and State drug control laws. Persons making final disposition or destruction of the property under court order shall report, under oath, to the court the exact circumstances of that disposition or destruction and a copy of that report shall be sent to the State Treasurer.

Sec. 8. IMPLEMENTATION; CONDITION OF OPERATION

(a) The requirement under 13 V.S.A. § 3605 that a person convicted of criminal timber trespass or assessed a civil penalty for timber trespass shall file a surety bond or letter of credit with the Office of the Attorney General shall, as a condition of continued or future operation, apply to all persons convicted of a criminal fine under 13 V.S.A. § 3606a or assessed civil liability under 13 V.S.A. § 3606 prior to July 1, 2024 and for which the criminal fine or civil liability remains unpaid as of July 1, 2024.

(b) The Attorney General shall send notice of the requirement for a surety bond or letter of credit under subsection (a) of this section as a condition of continued operation to all persons in the State who, as of the effective date of this act, have failed to pay criminal fines or civil damages assessed for timber trespass under 13 V.S.A. §§ 3606 and 3606a.

Sec. 9. OFFICE OF THE ATTORNEY GENERAL; REPORT ON TIMBER

TRESPASS ENFORCEMENT

(a) On or before January 15, 2025, the Office of the Attorney General shall submit to the House Committees on Agriculture, Food Resiliency, and Forestry and on Judiciary and the Senate Committees on Natural Resources and Energy and on Judiciary a report regarding the current enforcement of timber trespass within the State and potential methods of improving enforcement. The report shall include:

(1) a summary of the current issues pertaining to enforcement of timber trespass statutes;

(2) a summary of mechanisms or alternatives utilized in other states to effectively enforce or prevent timber theft or similar crimes; and

(3) recommendations for programs, policy changes, staffing, and budget estimates to improve enforcement and prevention; ensure consumer protection; and reduce the illegal harvesting, theft, and transporting of timber in the State, including proposed statutory changes to implement the recommendations.

(b) The Office of the Attorney General shall consult with the Department of Forests, Parks and Recreation, the Department of Public Safety, the Professional Logging Contractors of the Northeast, the Vermont Forest Products Association, and other interested parties in the preparation of the report required under this section.

Sec. 10. EFFECTIVE DATES

This section and Sec. 6 (repeal of sunset of allocation of forfeited proceeds) shall take effect on passage. All other sections shall take effect on July 1, 2024.

(Committee Vote: 11-0-0)

CONSENT CALENDAR

Concurrent Resolutions for Adoption Under Joint Rules 16a - 16d

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration in that member's chamber before today's adjournment. Requests for floor consideration in either chamber should be communicated to the Senate Secretary's Office or the House Clerk's Office, as applicable. For text of resolutions, see Addendum to House Calendar of February 1, 2024.

H.C.R. 144

House concurrent resolution designating February 8, 2024 as Farm to School and Farm to Early Childhood Awareness Day at the State House

H.C.R. 145

House concurrent resolution congratulating the 2023 Harwood Union High School championship bass fishing team

H.C.R. 146

House concurrent resolution congratulating the 2023 Harwood Union High School Division II boys' championship soccer team

H.C.R. 147

House concurrent resolution honoring the organizations and individuals working to resolve Vermont's rural broadband access crisis through communications union districts

For Informational Purposes

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3)(D):

JFO #3179: Two (2) limited-service positions. One (1) to the Department of Mental Health, Project AWARE Lead Coordinator and one (1) to the Agency of Education, Project AWARE Co-Coordinator. The positions will liaison to coordinate and expand the state's efforts to develop sustainable infrastructure for school-based mental health. Both positions are fully funded through 9/29/28 from previous SAMHSA grant award JFO #2934.

[Received January 26, 2024]

JFO #3178: \$456,436.00 to the Agency of Natural Resources, Secretary's Office from the U.S. Environmental Protection Agency. Funds will support (1) limited-service position, Environmental Analyst IV. This position will serve as administrative lead developing the updated Climate Action Plan with the Vermont Climate Council and perform added work required by the EPA grant. Position is funded through 6/30/2027.

[Received January 11, 2024]

JFO #3177: \$2,543,564.00 to the Agency of Natural Resources, Secretary's Office from the U.S. Environmental Protection Agency. Funding is phase one of a two-phase funding opportunity aimed to support Vermont with climate change mitigation planning efforts. A comprehensive climate action plan will be developed, to overlap with and be synonymous to the required update to Vermont's Climate Action Plan in 2025.

[Received January 12, 2024]

JFO #3176: \$250,000.00 to the Agency of Human Services, Department of Mental Health from the National Association of State Mental Health Program Directors. These funds will increase rapid access to behavioral health care by supporting the peer service component of the mental health urgent care clinic being established in Chittenden County. This clinic will offer an alternative to seeking mental health care in emergency departments

[Received January 11, 2024]