

1 H.614

2 Introduced by Representative Mihaly of Calais

3 Referred to Committee on

4 Date:

5 Subject: Crimes; consumer protection; land improvement fraud; timber
6 trespass

7 Statement of purpose of bill as introduced: This bill proposes to establish the
8 crime of land improvement fraud, including forestry operations. The bill also
9 provides that a person would be required to post a surety bond or letter of
10 credit with the Attorney General if the person knowingly commits multiple
11 violations of land improvement fraud, knowingly or recklessly commits
12 multiple violations of timber trespass, or is subject to two or more unpaid civil
13 judgements for timber trespass. In addition, the bill would provide that
14 equipment used in the commission of land improvement fraud or timber
15 trespass would be subject to seizure and forfeiture.

16 An act relating to land improvement fraud and timber trespass

17 It is hereby enacted by the General Assembly of the State of Vermont:

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

19 § 2029. HOME IMPROVEMENT AND LAND IMPROVEMENT FRAUD

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

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

6 (2)(A) “Land improvement” means:

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

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

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

16 (iv) forestry operations, as that term is defined in 10 V.S.A.
17 § 2602, including the construction of trails, roads, and structures associated
18 with forestry operations and the transportation off-site of trees, shrubs, or
19 timber.

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

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

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

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

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

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

18 (iii) make the payment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (1) the work is for a company or individual engaged in home
18 improvement or land improvement activities and the company has not
19 previously committed a violation under this section, the person has no relation
20 to the company personally or in its corporate form, and the person first notifies
21 the company or individual of the conviction and notifies the Office of the

1 Attorney General of the person's current address and telephone number; the
2 name, address, and telephone number of the company or individual for whom
3 the person is going to work; and the date on which the person will start
4 working for the company or individual; or

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

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

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

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

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

19 (g) The Attorney General or a law enforcement officer may, according to
20 the requirements of 18 V.S.A. chapter 84, subchapter 2, seize from a person
21 alleged to have committed home improvement or land improvement fraud

1 under this section property that was used in the commission of the alleged
2 fraud.

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

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

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

13 § 3605. FINANCIAL SURETY REQUIRED FOR CONTINUED TIMBER;
14 HARVESTING ACTIVITIES

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

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

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

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

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

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

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

19 (2) the person notifies the Office of the Attorney General of the intent to
20 engage in timber harvesting activities, has filed a surety bond or an irrevocable
21 letter of credit with the Office in an amount of not less than \$50,000.00, and

1 pays on a regular basis all fees associated with maintaining such bond or letter
2 of credit.

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

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

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

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

11 § 3605a. SEIZURE; FORFEITURE; DEBARMENT

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

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

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

2 § 4241. SCOPE

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

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

7 * * *

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

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

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

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

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

15 (2) a violation of 13 V.S.A. § 364;

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

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

18 13 V.S.A. § 3606.

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

2 § 4243. JUDICIAL FORFEITURE PROCEDURE

3 (a) Conviction or agreement required. An asset is subject to forfeiture by
4 judicial determination under section 4241 of this title ~~and~~, 13 V.S.A. § 364, 13
5 V.S.A. § 2029, 13 V.S.A. § 3605a, or 13 V.S.A. § 3606 if:

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

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

11 (3) a person is subject to a civil action from trespass under 13 V.S.A.
12 § 3606.

13 * * *

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

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

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

5 Sec. 5. 18 V.S.A. § 4248(b) is amended to read:

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

13 Sec. 6. IMPLEMENTATION; CONDITION OF OPERATION

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

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

6 Sec. 7. EFFECTIVE DATE

7 This act shall take effect on July 1, 2024.