

1 H.528

2 Introduced by Representatives Partridge of Windham, Lawrence of Lyndon

3 and Obuchowski of Rockingham

4 Referred to Committee on

5 Date:

6 Subject: Crimes and criminal procedure; trees and plants; timber trespass

7 Statement of purpose: This bill proposes to provide criminal penalties for a
8 person who knowingly cuts, destroys, or removes forest products without the
9 consent of the owner of the forest products. In addition, the bill provides that a
10 person who cuts, destroys, or removes forest products without the consent of
11 the owner of the forest products is liable to the owner of the forest products for
12 treble damages or \$1,000.00, whichever is greater, for each tree, log, or sapling
13 that is cut, destroyed, or removed.

14 An act relating to the illegal cutting, removal, or destruction of forest
15 products

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

1 ~~Sec. 1. 13 V.S.A. § 3601 is added to read:~~

2 § 3601. CUTTING, REMOVING, OR DESTROYING FOREST PRODUCTS

3 (a) As used in this section, "forest products" means timber, trees, logs,
4 lumber, wood chips, or maple sap or sugar, whether merchantable or
5 nonmerchantable.

6 (b) A person who knowingly cuts, destroys, or removes forest products
7 without the consent of the owner of the forest products shall be:

8 (1) imprisoned not more than one year or fined not more than \$1,000.00
9 or both if the value of the forest products at issue is not more than \$1,000.00;
10 or

11 (2) imprisoned not more than five years or fined not more than
12 \$10,000.00 or both if the value of the forest products at issue is more than
13 \$1,000.00.

14 Sec. 2. 13 V.S.A. § 3606 is amended to read:

15 ~~§ 3606. TREBLE DAMAGES FOR CONVERSION OF TREES OR~~

16 ~~DEFACING MARKS ON LOGS DAMAGES FOR CUTTING,~~

17 ~~DESTROYING, OR REMOVING FOREST PRODUCTS~~

18 ~~If a person cuts down, destroys or carries away any tree or trees placed or~~
19 ~~growing for any use or purpose whatsoever, or timber, wood, or underwood~~
20 ~~standing, lying or growing belonging to another person, without leave from the~~
21 ~~owner of such trees, timber, wood, or underwood, or cuts out, alters or defaces~~

1 ~~the mark of a log or other valuable timber, in a river or other place, the party~~
2 ~~injured may recover of such person treble damages in an action on this statute.~~
3 ~~However, if it appears on trial that the defendant acted through mistake, or had~~
4 ~~good reason to believe that the trees, timber, wood, or underwood belonged to~~
5 ~~him, or that he had a legal right to perform the acts complained of, the plaintiff~~
6 ~~shall recover single damages only, with costs~~

7 (a) A person who cuts, destroys, or removes forest products without the
8 consent of the owner of the forest products shall be liable to the owner of the
9 forest products for treble damages or the amount of \$1,000.00, whichever is
10 greater, for each tree, log, or sapling that is cut, destroyed, or removed.

11 (b) As used in this section, "forest products" means timber, trees, logs,
12 lumber, wood chips, or maple sap or sugar, whether merchantable or
13 nonmerchantable.

Sec. 1. 13 V.S.A. §§ 3601–3604 are added to read:

§ 3601. DEFINITIONS

As used in this chapter:

(1) "Boundary tree" means a tree, the stem or trunk of which straddles
an established property line and is jointly owned by abutting property owners.

(2) "Established property line" means a line demarcated by
monuments, signs, markings, pins, reference points, markers, or other means
that denote a change in ownership between abutting properties.

(3) "Harvest unit" means the area of land from which timber will be
harvested or the area of land on which timber stand improvement will occur.

(4) "Harvester" means a person, firm, company, corporation, or other
legal entity that harvests timber.

(5) "Landowner" means the person, firm, company, corporation, or other legal entity that owns or controls the land or owns or controls the right to harvest timber on the land.

(6) "Landowner's agent" means a person, firm, company, corporation, or other legal entity representing the landowner in a timber sale, timber harvest, or land management.

(7) "Line tree" means a boundary tree that is blazed, painted, embedded with wire fence, or otherwise demarcated to indicate the location of the established property line.

(8) "Stump diameter" means the diameter of a tree stump remaining or the diameter of the tree at four and one-half feet from the ground if the stump remaining after harvest is greater than four and one-half feet high.

§ 3602. UNLAWFUL CUTTING OF TREES

(a) Any person who cuts, fells, destroys to the point of no value, or substantially damages the potential value of a tree without the consent of the owner of the property on which the tree stands shall be assessed a civil penalty in the following amounts for each tree over two inches in diameter that is cut, felled, or destroyed:

(1) if the tree is no more than six inches in diameter, not more than \$25.00;

(2) if the tree is more than six inches and not more than ten inches in diameter, not more than \$50.00;

(3) if the tree is more than 10 inches and not more than 14 inches in diameter, not more than \$150.00;

(4) if the tree is more than 14 inches and not more than 18 inches in diameter, not more than \$500.00;

(5) if the tree is more than 18 inches and not more than 22 inches in diameter, not more than \$1,000.00;

(6) if the tree is greater than 22 inches in diameter, not more than \$1,500.00.

(b) In calculating the diameter and number of trees cut, felled, or destroyed under this section, a law enforcement officer may rely on a written damage assessment completed by a professional arborist or forester.

§ 3603. HARVESTING TIMBER NEAR A PROPERTY LINE

(a) A landowner who authorizes timber harvesting or who in fact harvests timber shall clearly and accurately mark with flagging or other temporary and

visible means the harvest unit or the property line. Each mark of a harvest unit or property line shall be visible from the next and shall not exceed 100 feet apart. The marking of a harvest unit or property lines shall be completed prior to commencement of a timber harvest. If a violation as described in section 3602 of this title occurs due to the failure of a landowner to mark a harvest unit or property line, the landowner who failed to mark a harvest unit or property line in accordance with the requirements of this subsection shall be assessed a civil penalty of not less than \$250.00 and not more than \$1,000.00. A landowner or landowner's agent marketing a harvest unit or property line under this section shall not be required to comply with the requirements of chapter 45 of Title 26.

(b) A landowner or landowner's agent shall obtain the written permission of the co-owner of a boundary tree prior to harvesting. A landowner or landowner's agent who authorizes the harvest of or who in fact harvests a boundary tree without first obtaining permission from the abutting landowner shall be assessed a civil penalty of not less than \$250.00 and not more than \$1,000.00.

(c) A landowner or landowner's agent who authorizes the harvest of or who in fact harvests a line tree shall be assessed a civil penalty of not less than \$250.00 and not more than \$1,000.00.

§ 3604. EXEMPTIONS

The cutting, felling, or destruction of a tree or the harvest of timber by the following is exempt from the requirements of sections 3602, 3603, and 3606 of this title:

(1) the agency of transportation conducting brush removal on state highways or agency maintained trails;

(2) a municipality conducting brush removal subject to the requirements of 19 V.S.A. § 904;

(3) a utility conducting vegetation maintenance within the boundaries of the utility's established right-of-way;

(4) a harvester under the authority or contract with a landowner within a harvest unit or property that has been marked by a landowner under subsection 3603(a) of this title. A landowner who harvests timber on his or her own property shall not be a "harvester" for the purposes of this subdivision; or

(5) a railroad conducting vegetation maintenance or brush removal in the railroad right-of-way.

Sec. 2. 13 V.S.A. § 3606 is amended to read:

*§ 3606. TREBLE DAMAGES FOR CONVERSION OF TREES OR
DEFACING MARKS ON LOGS*

If a person cuts down, destroys, or carries away any tree or trees placed or growing for any use or purpose whatsoever, or timber, wood, or underwood standing, lying, or growing belonging to another person, without leave from the owner of such trees, timber, wood, or underwood, or cuts out, alters, or defaces the mark of a log or other valuable timber, in a river or other place, the party injured may recover of such person, in an action on this statute, treble damages in an action on this statute or for each tree the same amount that would be assessed as a civil penalty under section 3602 of this title whichever is greater. However, if it appears on trial that the defendant acted through mistake, or had good reason to believe that the trees, timber, wood, or underwood belonged to him or her, or that he or she had a legal right to perform the acts complained of, the plaintiff shall recover single damages only, with costs. For purposes of this section, "damages" shall include any damage caused to the land or improvements thereon as a result of a person cutting, felling, destroying to the point of no value, substantially reducing the potential value, or carrying away a tree, timber, wood, or underwood without the consent of the owner of the property on which the tree stands. If a person cuts down, destroys, or carries away and tree or trees placed or growing for any use or purpose whatsoever, or timber, wood, or underwood standing, lying, or growing belonging to another person due to the failure of the landowner or the landowner's agent to mark the harvest unit or property line properly, as required under subsection 3603(a) of this title, a cause of action for damages may be brought against the landowner.

Sec. 3. 4 V.S.A. § 1102(b) is amended to read:

(b) The judicial bureau shall have jurisdiction of the following matters:

** * **

(18) Violations of 23 V.S.A. § 3327(d), relating to obeying a law enforcement officer while operating a vessel.

(19) Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and harvesting near a property line.