

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 854
3 entitled “An act relating to timber trespass” respectfully reports that it has
4 considered the same and recommends that the Senate propose to the House that
5 the bill be amended as follows:

6 Sec. 1. 13 V.S.A. chapter 77 is amended to read:

7 CHAPTER 77. TREES AND PLANTS

8 § 3601. DEFINITIONS

9 As used in this chapter:

10 (1) “Diameter breast height” or “DBH” means the diameter of a
11 standing tree at four and one-half feet from the ground.

12 (2) “Harvest” means the cutting, felling, or removal of timber.

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

15 (4) “Harvester” means a person, firm, company, corporation, or other
16 legal entity that harvests timber.

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

1 (6) “Landowner’s agent” means a person, firm, company, corporation,
2 or other legal entity representing the landowner in a timber sale, timber
3 harvest, or land management.

4 (7) “Stump diameter” means the diameter of a tree stump remaining
5 after cutting, felling, or destruction.

6 (8) “Forest products” means logs; pulpwood; veneer; bolt wood; wood
7 chips; stud wood; poles; pilings; biomass; fuel wood; or bark.

8 (9) “Timber” means:

9 (A) trees of every size, nature, kind, and description; and

10 (B) sprouts from which trees may grow, seedlings, saplings, bushes,
11 or shrubs that have been planted or cultivated by a person who owns or
12 controls the property where they are located.

13 § 3602. ~~UNLAWFUL CUTTING OF TREES~~ VALUATION OF TREES OR
14 TIMBER

15 (a) Any person ~~who cuts, fells, destroys to the point of no value, or~~
16 ~~substantially damages the potential value of a tree without the consent of the~~
17 ~~owner of the property on which the tree stands shall be assessed a civil penalty~~
18 ~~in the following amounts for each tree over two inches in diameter that is cut,~~
19 ~~felled, or destroyed~~ who is entitled to damages pursuant to section 3606 of this
20 title or who is entitled to restitution for a violation of section 3606a of this title
21 may provide an assessment of the value, based upon the kind, condition,

1 location, and use of the timber cut down, destroyed, removed, injured,
2 damaged, or carried away or, in the alternative, may assess the value of the
3 timber as follows:

4 (1) if ~~the~~ a tree is no more than six inches in stump diameter or DBH,
5 ~~not more than \$25.00~~ \$100.00;

6 (2) if ~~the~~ a tree is more than six inches and not more than ten inches in
7 stump diameter or DBH, ~~not more than \$50.00~~ \$200.00;

8 (3) if ~~the~~ a tree is more than 10 inches and not more than 14 inches in
9 stump diameter or DBH, ~~not more than \$150.00~~ \$500.00;

10 (4) if ~~the~~ a tree is more than 14 inches and not more than 18 inches in
11 stump diameter or DBH, ~~not more than \$500.00~~ \$1,000.00;

12 (5) if ~~the~~ a tree is more than 18 inches and not more than 22 inches in
13 stump diameter or DBH, ~~not more than \$1,000.00~~ \$1,500.00;

14 (6) if ~~the~~ a tree is greater than 22 inches in stump diameter or DBH, ~~not~~
15 ~~more than \$1,500.00~~ \$2,000.00;

16 (7) for a bush or shrub, \$50.00.

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

1 § 3603. **MARKING HARVEST UNITS**

2 A landowner who authorizes timber harvesting or who in fact harvests
3 timber shall clearly and accurately mark the harvest unit with ~~flagging or other~~
4 ~~temporary and~~ visible means ~~the harvest unit~~. ~~Each mark of a harvest unit~~
5 ~~shall be visible from the next and shall not exceed 100 feet apart~~. The marking
6 of a harvest unit shall be completed prior to commencement of a timber
7 harvest. ~~If a violation as described in section 3602 of this title occurs due to~~
8 ~~the failure of a landowner to mark a harvest unit, the landowner who failed to~~
9 ~~mark a harvest unit in accordance with the requirements of this subsection~~
10 ~~shall be assessed a civil penalty of not less than \$250.00 and not more than~~
11 ~~\$1,000.00~~. ~~The Commissioner of Forests, Parks and Recreation may enforce~~
12 ~~the requirements of this section under 10 V.S.A. chapter 201.~~

13 § 3604. EXEMPTIONS

14 The cutting, felling, or destruction of a tree or the harvest of timber by the
15 following is exempt from the requirements ~~of sections 3602, 3603, and 3606~~
16 ~~section 3603 of this title~~ and shall not be subject to a civil action under section
17 ~~3606 of this title or a criminal penalty under section 3606a of this title~~:

18 (1) The Agency of Transportation, ~~or its representatives,~~ conducting
19 ~~brush removal on State highways or Agency maintained trails~~ vegetation
20 management.

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

3 (3) A utility conducting vegetation maintenance management within the
4 boundaries of the utility’s established right-of-way.

5 (4) A harvester harvesting timber that a landowner has authorized for
6 harvest within a harvest unit that has been marked by a landowner under
7 section 3603 of this title. A landowner who harvests timber on his or her own
8 property shall not be a “harvester” for the purposes of this subdivision.

9 (5) A railroad conducting vegetation ~~maintenance or brush removal in~~
10 ~~the railroad right-of-way~~ management.

11 (6) A licensed surveyor establishing boundaries between abutting
12 parcels under 27 V.S.A. § 4.

13 § 3606. ~~TREBLE DAMAGES FOR CONVERSION OF TREES OR~~

14 ~~DEFACING MARKS ON LOGS~~ TRESPASS; CIVIL ACTION

15 (a) ~~If~~ In addition to any other civil liability or criminal penalty allowed by
16 law, if a person cuts down, fells, destroys, removes, injures, damages, or
17 carries away any tree or trees, brush, or shrubs timber placed or growing for
18 any use or purpose whatsoever, or timber, wood, or underwood forest products
19 standing, lying, or growing belonging to another person, without leave
20 permission from the owner of such trees, the timber, wood, or underwood or
21 forest product, or cuts out, alters, or defaces the mark of a log or other valuable

1 ~~timber, in a river or other place~~ forest product, the party injured may recover of
2 such person, in an action on this statute, treble damages ~~or for each tree the~~
3 ~~same amount that would be assessed as a civil penalty under section 3602 of~~
4 ~~this title, whichever is greater~~ for the value of the timber or forest product, and
5 any damage caused to the land or improvements thereon as a result of such
6 action. The injured party or landowner may rely on an assessment of damages
7 based on the kind, condition, location, and use of the timber or forest product
8 by the injured party or landowner, or alternatively, may elect to rely on the
9 values established under section 3602 of this title.

10 ~~(b) However, if it appears on trial that the defendant acted through mistake,~~
11 ~~or~~ If the defendant in an action brought pursuant to subsection (a) of this
12 section establishes by a preponderance of the evidence that he or she had good
13 reason to believe that the ~~trees, timber, wood, or underwood~~ or forest products
14 belonged to him or her, or that he or she had a legal right to perform the acts
15 complained of, the plaintiff shall recover single damages only, with costs.

16 ~~(c) For purposes of~~ As used in this section, “damages” shall include any
17 damage caused to the land or improvements thereon as a result of a person
18 cutting, felling, destroying ~~to the point of no value, substantially reducing the~~
19 ~~potential value,~~ removing, injuring, damaging, or carrying away ~~a trees,~~
20 ~~timber, wood, or forest products~~ without the ~~consent~~ permission of the owner
21 of the property on which the ~~tree~~ timber stands. ~~If a person cuts down,~~

1 ~~destroys, or carries away a tree or trees placed or growing for any use or~~
2 ~~purpose whatsoever or timber, wood, or underwood standing, lying, or~~
3 ~~growing belonging to another person due to the failure of the landowner or the~~
4 ~~landowner's agent to mark the harvest unit properly, as required under section~~
5 ~~3603 of this title, a cause of action for damages may be brought against the~~
6 ~~landowner.~~

7 § 3606a. TRESPASS; CRIMINAL PENALTY

8 (a) No person shall knowingly or recklessly:

9 (1) cut down, fell, destroy, remove, injure, damage, or carry away any
10 timber or forest product placed or growing for any use or purpose whatsoever,
11 or timber or forest product lying or growing belonging to another person,
12 without permission from the owner of the timber or forest product; or

13 (2) deface the mark of a log, forest product, or other valuable timber in a
14 river or other place.

15 (b) Any person who violates subsection (a) of this section shall:

16 (1) for a first offense, be imprisoned not more than one year or fined not
17 more than \$20,000.00, or both; or

18 (2) for a second or subsequent offense, be imprisoned not more than two
19 years or fined not more than \$50,000.00, or both.

20 Sec. 2. 4 V.S.A. § 1102(b) is amended to read:

21 (b) The Judicial Bureau shall have jurisdiction of the following matters:

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(21) ~~Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and the marking of harvest units. [Repealed.]~~

Sec. 3. 10 V.S.A. § 8003(a) is amended to read:

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

* * *

(26) 10 V.S.A. chapter 168, relating to the collection and disposal of primary batteries; ~~and~~

(27) 10 V.S.A. chapter 123, relating to threatened and endangered species; and

(28) 13 V.S.A. § 3603, marking harvest units.

Sec. 4. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

1 (U) chapter 168 (product stewardship for primary batteries and
2 rechargeable batteries);

3 (V) 13 V.S.A. § 3603 (marking harvest units).

4 Sec. 5. EFFECTIVE DATE

5 This act shall take effect on July 1, 2016.

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8 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE