

1 S.291

2 Introduced by Senator Perchlik

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. The bill also provides that if a person is
9 convicted of the crime of land improvement fraud, the crime of timber
10 trespass, or a civil judgement for timber trespass, the person would be required
11 to post a surety bond or letter of credit with the Attorney General. In addition,
12 the bill would provide that equipment used in the commission of land
13 improvement fraud or timber trespass would be subject to seizure and
14 forfeiture.

15 An act relating to land improvement fraud and timber trespass

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

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

18 § 2029. HOME IMPROVEMENT AND LAND IMPROVEMENT FRAUD

19 (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 or a refund of payment
14 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;

18 (2) misrepresents a material fact relating to the terms of the contract or
19 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 person first notifies the
19 company or individual of the conviction and notifies the Office of the Attorney
20 General of the person's current address and telephone number; the name,
21 address, and telephone number of the company or individual for whom the

1 person is going to work; and the date on which the person will start working
2 for the company or individual; or

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

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

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

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

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

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

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

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

7 § 3605. FINANCIAL SURETY REQUIRED FOR CONTINUED TIMBER;

8 HARVESTING ACTIVITIES

9 (a) A person who is convicted of timber trespass under section 3606a of
10 this title, is subject to a civil judgement under section 3606 of this title, or is
11 convicted of land improvement fraud under section 2029 of this title may
12 engage in timber harvesting activities for compensation only if:

13 (1) the work is for a company or individual engaged in timber
14 harvesting activities, and the person first notifies the company or individual of
15 the conviction or civil judgment and notifies the Office of the Attorney
16 General of the person's current address and telephone number; the name,
17 address, and telephone number of the company or individual for whom the
18 person is going to work; and the date on which the person will start working
19 for the company or individual; or

20 (2) the person notifies the Office of the Attorney General of the intent to
21 engage in timber harvesting activities, has filed a surety bond or an irrevocable

1 letter of credit with the Office in an amount of not less than \$50,000.00, and
2 pays on a regular basis all fees associated with maintaining such bond or letter
3 of credit.

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

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

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

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

12 § 3605a. SEIZURE; FORFEITURE; DEBARMENT

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

17 (b) A person convicted of timber trespass is prohibited from contracting,
18 directly or indirectly, with the State or any of its subdivisions for a period of up
19 to three years following the date of the conviction, as determined by the
20 Commissioner of Buildings and General 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 13

18 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, after consultation with the Commissioner of
2 Forests, Parks and Recreation, shall send notice of the requirement for a surety
3 bond or letter of credit under subsection (a) of this section as a condition of
4 continued operation to all persons in the State who, as of the effective date of
5 this act, have failed criminal fines or civil damages for timber trespass under
6 13 V.S.A. §§ 3606 and 3606a.

7 Sec. 7. EFFECTIVE DATE

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