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SENATE BILL NO. 548

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 55-332 and 55-334 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 55-332.1, and to repeal § 55-333 of the Code of Virginia, relating to theft of timber; penalty.

Patrons—Puckett; Delegate: Stump

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-332 and 55-334 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 55-332.1 as follows:

§ 55-332. Procedure for determination of damage.

A. The owner of the land on which such trespass was committed shall have the right, within ~~thirty~~ 30 days after the discovery of such trespass and the identity of the trespasser, to notify the trespasser and to appoint an experienced timber estimator to determine the amount of damages. For the purposes of determining damages, the value of the timber cut shall ~~mean be calculated by first determining the~~ value of the timber on the stump. Within ~~thirty~~ 30 days after receiving notice of the alleged trespass and of the appointment of such estimator, the alleged trespasser, if he does not deny the fact of trespass, shall appoint an experienced timber estimator to participate with the one already so appointed in the estimation of damages. If the two estimators cannot agree they shall select a third person, experienced and disinterested, and the decision thereafter made shall be final and conclusive and not subject to appeal. The estimation of damages and the rendition of statement must be effected within thirty days from the receipt of notice of appointment, by the trespasser, of an estimator.

If the alleged trespasser fails to appoint an estimator within the prescribed time, or to notify, within such time, that the allegation of the fact of trespass is disputed, the estimator appointed by the injured party may make an estimate, and collection or recovery may be had accordingly.

B. *Except as provided in subsection C of this section, any person who cuts, removes, or severs any timber from the land of another without legal right or permission shall be liable to pay to the rightful owner of the timber three times the value of the timber on the stump and shall pay to the rightful owner of the property the reforestation costs incurred not to exceed \$450 per acre, the costs of ascertaining the value of the timber, and any directly associated legal costs incurred by the owner of the timber as a result of the trespass.*

C. *If a person alleged to have violated § 55-331 demonstrates that prior to any cutting or harvesting a signed statement was obtained by the defendant from the rightful owner or the agent of the rightful owner of the wrongfully harvested trees that (i) all of the trees identified to be severed or cut were on the rightful owner's property and that none were on the property of another person, and (ii) the defendant had the rightful owner's permission to cut and remove the trees on his property, then the court shall render a judgment only against the person or persons directing or authorizing that the trees be severed or cut.*

§ 55-332.1. Larceny of timber; penalty.

A. Any person who knowingly and willfully takes, steals, and removes from the lands of another any merchantable timber growing, standing, or lying on the lands of the value of less than \$250 is guilty of petit larceny and, if the value is \$250 or more, is guilty of grand larceny. Any person so convicted shall be ordered to pay restitution calculated pursuant to § 55-332.

B. Failure of any person to comply with the requirements of subsection H of § 10.1-1181.2 shall serve as prima facie evidence of the intent to take, steal, and remove merchantable timber from the lands of another.

C. Proof in a criminal prosecution pursuant to subsection A that the metes and bounds of the subject property at the locale of the theft were appropriately established and marked by reasonably permanent and visible markers shall be prima facie evidence of the intent to take, steal, and remove merchantable timber from the lands of another.

D. The Virginia Department of Forestry shall make all necessary and proper inquiries and investigations related to the theft of timber. It may appoint law enforcement officers, investigators, and other necessary personnel subject to its supervision. All such designated employees of the Department of Forestry shall have the general police powers of sheriffs and other law enforcement officers in the enforcement of this provision. They shall be permitted to enter upon any lands and perform any work

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59 *necessary to the performance of their duties without liability for trespass or damage therefrom. The*
60 *Department may adopt regulations necessary to facilitate enforcement of this chapter. Nothing in this*
61 *section shall be construed as relieving any sheriff or sergeant, police officer, or any other official now*
62 *or hereafter invested with police powers and duties, state or local, from the duty of enforcement of such*
63 *laws within the scope of his authority and duty.*

64 § 55-334. When person damaged may proceed in court.

65 If such amount be not paid within ~~thirty~~ 30 days after rendition of statement, the person upon whose
66 land the trespass occurred may proceed for judgment in the amount of payment as specified in ~~§ 55-333~~
67 ~~§ 55-332.1~~ plus an amount equal to the actual damages as determined by § 55-332 in any court of the
68 county having jurisdiction in civil matters.

69 If, upon receiving notice of the alleged trespass and of the appointment of an estimator, the person
70 so receiving notice does not admit the fact of trespass, he may decline to appoint an estimator and
71 notify the other party to such effect, together with his reason for refusing to appoint an estimator, and in
72 such case the aggrieved party may proceed in the appropriate court of the county and, upon proving the
73 fact of trespass and the amount of damages, may recover triple the amount of damages and costs from
74 the trespassers.

75 **2. That § 55-333 of the Code of Virginia is repealed.**

76 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
77 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
78 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
79 **periods of commitment to the custody of the Department of Juvenile Justice.**