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SENATE BILL NO. 548

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 28, 2004)

(Patron Prior to Substitute—Senator Puckett)

A BILL to amend and reenact §§ 55-331, 55-332 and 55-334 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 55-334.1 and 55-334.2 and to repeal § 55-333 of the Code of Virginia, relating to theft of timber; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-331, 55-332 and 55-334 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding sections numbered 55-334.1 and 55-334.2 as follows:

§ 55-331. Damages recoverable for timber cutting.

If any person, firm or corporation, in the course of cutting timber on any timberlands in the Commonwealth, encroaches and cuts timber on any timberland, except when acting prudently and under bona fide claim of right, the owner thereof shall, in addition to all other remedies afforded by law, have the benefit of a right to, and a summary remedy for recovery of, damages in an amount as hereinafter specified and recovered as hereinafter provided.

If the trespass is proven, the defendant shall have the burden of proving that he acted prudently and under a bona fide claim of right. For purposes of this article, "timberland" means land bearing at least eighty well-distributed seedlings or sprouts of woody species per acre, excluding platted, subdivided or developed lands.

§ 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 30 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. Any person who (i) severs or removes any timber from the land of another without legal right or permission or (ii) authorizes or directs the severing or removal of timber or trees 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.

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

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

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

§ 55-334.1. Larceny of timber; penalty.

A. Any person who knowingly and willfully takes, steals, and removes from the lands of another any timber growing, standing or lying on the lands of the value of less than \$200 is guilty of petit larceny punishable under § 18.2-96 and if the value is \$200 or more, is guilty of grand larceny, punishable under § 18.2-95. Any person so convicted shall be ordered to pay restitution calculated pursuant to

60 § 55-332.

61 *B. Proof in a criminal prosecution pursuant to subsection A that the metes and bounds of the*
62 *property where the alleged theft occurred was marked with readily visible paint marks not more than*
63 *100 feet apart on trees or posts along the property line and that each paint mark was a vertical line of*
64 *at least two inches in width and at least eight inches in length and the center of the mark was no less*
65 *than three feet or more than six feet from the ground or normal water surface shall be prima facie*
66 *evidence of the intent to take, steal and remove timber from the lands of another.*

67 § 55-334.2. Investigation of timber theft; Department of Forestry.

68 *The Department of Forestry is authorized to make all necessary and proper inquiries and*
69 *investigations related to the theft of timber. The Department of Forestry may appoint law-enforcement*
70 *officers, investigators, and other necessary personnel employed by the Department of Forestry. All such*
71 *designated employees of the Department of Forestry shall have the general police powers of sheriffs and*
72 *other law-enforcement officers in the enforcement of this provision and shall comply with the*
73 *compulsory minimum training standards for law-enforcement officers established by the Board of*
74 *Criminal Justice Services . They shall be permitted to enter upon any lands and perform any work*
75 *necessary to the performance of their duties without liability for trespass or damage thereon. Nothing in*
76 *this section shall be construed as relieving any sheriff or other law-enforcement officer or official now*
77 *or hereinafter invested with police powers and duties, state or local, from the duty of enforcement of*
78 *such laws within the scope of his authority and duty.*

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

80 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
81 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
82 **_____ for periods of imprisonment in state adult correctional facilities and _____ for**
83 **periods of commitment to the custody of the Department of Juvenile Justice.**