



# House of Representatives

General Assembly

**File No. 214**

January Session, 2017

House Bill No. 5655

*House of Representatives, March 27, 2017*

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING A PROPERTY OWNER'S LIABILITY FOR THE EXPENSES OF REMOVING A FALLEN TREE OR LIMB.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2017*) (a) If a tree located on  
2 private real property, or a limb from such tree, falls on an adjoining  
3 private property owner's land, the owner of the real property from  
4 which such tree or limb fell shall be presumed liable for the expenses  
5 of removing such tree or limb from such adjoining private property  
6 owner's land, if, prior to such tree or limb falling: (1) An arborist  
7 inspected the tree and documented that the tree or limb was diseased,  
8 decayed or damaged and likely to fall within five years of the date of  
9 such inspection; (2) the adjoining private property owner provided  
10 written notice by certified mail, return receipt requested, to the owner  
11 of the real property from which such tree or limb fell that the tree or  
12 limb was diseased, decayed or damaged and likely to fall within five  
13 years of the date of such inspection and requested that the condition be  
14 cured by removal, pruning, spraying or any other appropriate method;

15 and (3) the owner of the real property from which such tree or limb fell  
16 failed to cure the condition by removal, pruning, spraying or any other  
17 appropriate method within ninety days of the date of receiving such  
18 written notice. No property owner shall be required to provide access  
19 to his or her property for inspection by an arborist. An arborist's  
20 inability to access property for such inspection shall not waive the  
21 requirement of this subsection that an arborist make a determination  
22 that a tree or limb is diseased, decayed or damaged and likely to fall  
23 within five years of the date of such inspection. Written notice  
24 provided by a private property owner pursuant to this subsection shall  
25 be deemed personal to the particular owner providing such notice and  
26 shall not run with the land.

27 (b) The presumption in subsection (a) of this section may be  
28 rebutted upon a showing that: (1) After notice is given as described in  
29 subdivision (2) of subsection (a) of this section, an arborist inspected  
30 the tree or limb and documented that the tree or limb was not  
31 diseased, decayed or damaged and likely to fall; or (2) such tree or  
32 limb fell due to a reason other than the condition described in such  
33 notice, including, but not limited to, a motor vehicle collision, fire,  
34 lightning strike or other act of God.

35 (c) The provisions of this section shall not affect any rights of a  
36 policyholder under a liability insurance policy, except that the  
37 insurance company that issued such insurance policy may deduct from  
38 any amount owed to such insured for a covered loss arising from such  
39 tree or limb falling, the amount recovered by the policyholder  
40 pursuant to subsection (a) of this section, to the extent that such  
41 amount would have been a covered loss under such insurance policy.

42 (d) The provisions of this section shall not be construed to limit any  
43 person's right to pursue any additional civil remedy otherwise allowed  
44 by law.

45 (e) As used in this section (1) "private real property" does not  
46 include: (A) Real property owned by a political subdivision of the  
47 state, a water company, as defined in section 25-32a of the general

48 statutes, or a nonprofit organization qualified as a tax-exempt  
49 organization under Section 501(c)(3) of the Internal Revenue Code of  
50 1986, or any subsequent corresponding internal revenue code of the  
51 United States, as amended from time to time; (B) real property that is  
52 subject to a conservation easement held by such nonprofit  
53 organization; (C) timber land as described in section 12-97 of the  
54 general statutes; or (D) farm land, forest land or open space land as  
55 such terms are defined in section 12-107b of the general statutes; and  
56 (2) "arborist" has the same meaning as provided in section 23-61a of the  
57 general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	New section

**JUD**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill affects private landowners and does not result in a fiscal impact to the state or municipalities.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****HB 5655*****AN ACT CONCERNING A PROPERTY OWNER'S LIABILITY FOR THE EXPENSES OF REMOVING A FALLEN TREE OR LIMB.*****SUMMARY**

This bill establishes conditions under which a private real property owner ("land owner") is presumed liable for the expenses of removing a tree or tree limb that fell from his or her property onto an adjoining private owner's land.

It generally makes the land owner liable if he or she failed to act within 90 days after the adjoining owner notified him or her that, based on an arborist's inspection, a tree or limb on the property was likely to fall within five years. The bill specifies how the presumption may be rebutted.

Among other things, it also (1) exempts certain property from its provisions and (2) allows an insurance company, when paying for a related claim, to deduct any amount the adjoining land owner recovers under the bill.

EFFECTIVE DATE: October 1, 2017

**LIABILITY FOR FALLEN TREES*****Presumption of Liability***

Under the bill, a private land owner is presumed liable for the expenses of removing a tree or tree limb that fell from his or her property onto an adjoining private owner's land if, before the tree or limb fell:

1. a licensed arborist inspected the tree and documented that the tree or a limb was diseased, decayed, or damaged and likely to

fall within five years of the date of the inspection;

2. the adjoining private property owner notified the land owner of this determination and requested that the land owner cure the condition by any appropriate method (including removing, pruning, or spraying the tree); and
3. the land owner failed to do so within 90 days after receiving this notice.

The notice must be in writing and sent by certified mail, return receipt requested. The bill specifies that this notice is deemed personal to the owner who provided it and does not run with the land (i.e., the presumption of liability would not apply if the owner providing the notice sold the property before the tree fell, unless the new owner provided his or her own notice).

### ***Rebutting the Presumption***

The bill's presumption of liability may be rebutted if the land owner shows that:

1. after he or she received the notice, an arborist inspected the tree or limb and documented that it was not diseased, decayed, or damaged and likely to fall or
2. the tree or limb fell due to a reason other than the condition described in the notice, including a motor vehicle collision, fire, lightning, or other act of God.

### ***Private Real Property***

Under the bill, "private real property" does not include:

1. real property owned by a political subdivision of the state, a water company, or a tax-exempt nonprofit organization;
2. real property subject to a conservation easement held by a tax-exempt nonprofit organization;

3. timber land of more than 10 years' growth; or
4. farm land, forest land, or open space land eligible for the "490 program" (which allows such land to be assessed for property tax purposes based on its current use value rather than its full market value).

### ***Arborist Access and Impact on the Presumption***

The bill provides that:

1. land owners are not required to allow access to their property for an arborist's inspection and
2. if an arborist is unable to access the property, this does not waive the requirement for the arborist's determination as described above to establish the presumption.

### ***Insurance and Other Remedies***

The bill allows an insurance company to deduct from a payment under a liability policy the amount the policyholder recovers under the bill, to the extent that amount would be a covered loss under the policy. It does not otherwise affect a policyholder's rights under a liability policy.

The bill also does not limit anyone's right to pursue other civil remedies as allowed by law.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (03/10/2017)