
OLR Bill Analysis

HB 5598

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, 2021

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 limb was diseased, decayed, or damaged and likely to fall within five years of the inspection date;

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

The bill's provisions apply only to trees on "private real property" that fall onto other such private property. Under the bill, "private real property" does not include:

1. property owned by a political subdivision of the state, a water company, or a tax-exempt nonprofit organization;
2. 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 “PA 490 program” (which allows this 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 specifies that it does not limit anyone’s right to pursue other civil remedies as allowed by law.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 34 Nay 3 (03/29/2021)