



House of Representatives

File No. 746

General Assembly

January Session, 2021 **(Reprint of File No. 466)**

House Bill No. 5598
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 27, 2021

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, 2021*) (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 private real property
4 from which such tree or limb fell shall be presumed liable for the
5 expenses of removing such tree or limb from such adjoining private
6 property owner's land, if, prior to such tree or limb falling: (1) An
7 arborist inspected the tree and documented that the tree or limb was
8 diseased, decayed or damaged and likely to fall within five years of the
9 date of such inspection; (2) the adjoining private property owner
10 provided written notice by certified mail, return receipt requested, to
11 the owner of the real property from which such tree or limb fell that the
12 tree or limb was diseased, decayed or damaged and likely to fall within
13 five years of the date of such inspection and requested that the condition
14 be cured by removal, pruning, spraying or any other appropriate

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

27 (b) The presumption in subsection (a) of this section may be rebutted
28 upon a showing that: (1) After notice was given as described in
29 subdivision (2) of subsection (a) of this section, an arborist inspected the
30 tree or limb and documented that the tree or limb was not diseased,
31 decayed or damaged and likely to fall; or (2) such tree or limb fell due
32 to a reason other than the condition described in such notice, including,
33 but not limited to, a motor vehicle collision, fire, lightning strike or other
34 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 insurance
37 company that issued such insurance policy may deduct from any
38 amount owed to such insured for a covered loss arising from such tree
39 or limb falling, the amount recovered by the policyholder pursuant to
40 subsection (a) of this section, to the extent that such amount would have
41 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 include:
46 (A) Real property owned by the state, a political subdivision of the state,

47 a water company, as defined in section 25-32a of the general statutes, or
48 a nonprofit organization qualified as a tax-exempt organization under
49 Section 501(c)(3) of the Internal Revenue Code of 1986, or any
50 subsequent corresponding internal revenue code of the United States,
51 as amended from time to time; (B) real property that is subject to a
52 conservation easement held by such nonprofit organization; (C) timber
53 land, as described in section 12-97 of the general statutes; or (D) farm
54 land, forest land or open space land, as such terms are defined in section
55 12-107b of the general statutes; and (2) "arborist" has the same meaning
56 as provided in section 23-61a of the general statutes.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2021</i> | New section |

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.

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

The bill address disputes between private landowners and fallen trees and does not have an impact on the state or municipalities.

House "A" makes a clarifying change and does not result in a fiscal impact.

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

OLR Bill Analysis**HB 5598 (as amended by House "A")******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.

*House Amendment "A" clarifies that the bill does not apply to state-owned property.

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 private real property. Under the bill, this property does not include:

1. real property owned by the state, 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, forest, 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)