

AMENDED IN ASSEMBLY APRIL 12, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 992

Introduced by Assembly Member Nielsen

February 18, 2011

An act to amend Section 4515 of the Public Resources Code, relating to forestry. An act to amend Section 3346 of the Civil Code, to amend Section 733 of the Code of Civil Procedure, to amend Section 13007 of the Health and Safety Code, and to amend Section 4435 of the Public Resources Code, relating to civil liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 992, as amended, Nielsen. ~~Forestry: timber harvesting plan. Civil liability: wildfires.~~

Existing law specifies the measure of damages available for wrongful injuries to timber, trees, or underwood upon the land of another person, or removal of that wood, and for any trespass committed while acting in reliance upon a survey that improperly fixes the location of a boundary line.

This bill would provide that damage caused by an escaping fire, other than an arson fire, shall not be deemed a trespass for purposes of these provisions. The bill would provide that the amount of monetary damages recoverable by any person, including a governmental entity, for fire escaping to the land of another, other than arson, shall be limited to the fair market value of the land and timber affected by the fire in its prefire condition, less the fair market value of the land and timber in its postfire condition. The bill would provide that non-fee-based public

benefit use, land conservation management activity, and timber operations conducted in compliance with all laws and regulations pertaining or related to fire safety shall not be deemed a foreseeable risk in the context of any damage related to fire or its escape onto the property of another.

Existing law provides that any person who cuts down or carries off any wood, underwood, tree, or timber, or girdles or otherwise injures any tree or timber without lawful authority, as specified, is liable for treble the amount of damages that may be assessed therefor in a civil action.

This bill would provide that this provision shall not apply to damages caused by any wildfire, other than an arson fire.

Existing law provides that any person who personally or through another willfully, negligently, or in violation of law sets fire to, allows fire to be set to, or allows a fire kindled or attended by him or her to escape to the property of another is liable to the owner of that property for any damages to the property caused by the fire.

This bill would apply to a person who negligently, or in violation of law, commits any of the acts described above, instead of a person who personally or through another willfully or negligently commits any of those acts. The bill would require an action for damages under this provision to be brought within 3 years of the date of official extinguishment of the fire. The bill would require a public entity to give notice within 90 days of the official extinguishment of a fire to any person it has probable cause to believe may be liable for damages caused by the fire so that the entity may bring a civil action to recover those damages. By increasing the duties of local fire protection agencies, this bill would impose a state-mandated local program.

Under existing law, if a fire originates from the operation or use of an engine, machine, barbecue, incinerator, railroad rolling stock, chimney, or any other device that may kindle a fire, the occurrence of the fire is prima facie evidence of negligence in the maintenance, operation, or use of that engine, machine, barbecue, incinerator, railroad rolling stock, chimney, or other device. If the fire escapes from the place where it originated and it can be determined which person's negligence caused the fire, that person is guilty of a misdemeanor.

This bill, instead, would provide, if a fire originates from the operation or use of an engine, machine, barbecue, incinerator, railroad rolling stock, chimney, or any other device that may kindle a fire, and that fire escapes from the place where it originated, and it is proven that a

person's negligence proximately caused that fire, that person is guilty of a misdemeanor and may be held civilly liable for his or her negligence.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The Z'berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted to the Department of Forestry and Fire Protection. The act requires the State Board of Forestry and Fire Protection to submit to the Legislature on December 1st of each year a report on actions taken pursuant to the act during the preceding fiscal year.~~

~~This bill would instead require the board to submit the report on August 1st of each year.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3346 of the Civil Code is amended to
2 read:
3 3346. (a) For wrongful injuries to timber, trees, or underwood
4 upon the land of another *person*, or removal ~~thereof of that wood~~,
5 the measure of damages is three times ~~such the~~ sum as would
6 compensate for the actual detriment, ~~except that where~~ *unless* the
7 trespass was casual or involuntary, or ~~that~~ the defendant in any
8 action brought under this section had probable cause to believe
9 that the land on which the trespass was committed was his *or her*
10 own or the land of the person in whose service or by whose
11 direction the act was done, the measure of damages shall be twice
12 the sum as would compensate for the actual detriment, ~~and~~
13 ~~excepting further that where~~. *If the wood was taken by the authority*
14 of highway officers for the purpose of repairing a public highway

1 or bridge upon the land or adjoining it, ~~in which case judgment~~
 2 shall ~~only~~ be given *only* in a sum equal to the actual detriment.

3 (b) The measure of damages to be assessed against a defendant
 4 for any trespass committed while acting in reliance upon a survey
 5 of boundary lines ~~which~~ *that* improperly fixes the location of a
 6 boundary line, shall be the actual detriment incurred if both of the
 7 following conditions exist:

8 (1) The trespass was committed by a defendant who either
 9 himself *or herself* procured, or whose principal, lessor, or
 10 immediate predecessor in title procured the survey to be made;
 11 ~~and~~.

12 (2) The survey was made by a person licensed under the laws
 13 of this ~~State~~ *state* to practice land surveying.

14 (c) Any action for the damages specified by subdivisions (a)
 15 and (b) ~~of this section must~~ *shall* be commenced within five years
 16 from the date of the trespass.

17 (d) *Damage caused by an escaping fire, other than an arson*
 18 *fire, shall not be deemed a trespass for purposes of subdivisions*
 19 *(a) and (b).*

20 (e) *The amount of monetary damages recoverable by any person,*
 21 *including a governmental entity, for fire escaping to the land of*
 22 *another, other than arson, shall be limited to the fair market value*
 23 *of the land and timber affected by the fire in its prefire condition,*
 24 *less the fair market value of the land and timber in its postfire*
 25 *condition.*

26 (f) *Non-fee-based public benefit use, land conservation*
 27 *management activity, and timber operations conducted in*
 28 *compliance with all laws and regulations pertaining or related to*
 29 *fire safety shall not be deemed a foreseeable risk in the context of*
 30 *any damage related to fire or its escape onto the property of*
 31 *another.*

32 *SEC. 2. Section 733 of the Code of Civil Procedure is amended*
 33 *to read:*

34 733. (a) Any person who cuts down or carries off any wood
 35 ~~or~~, underwood, tree, or timber, or girdles or otherwise injures any
 36 tree or timber on the land of another person, ~~or~~ on the street or
 37 highway in front of any person's house, village, ~~or~~ city lot, or
 38 cultivated grounds; ~~or~~, on the commons or public grounds of any
 39 city or town, or on the street or highway in front ~~thereof~~ *of any*
 40 *city or town*, without lawful authority, is liable to the owner of

1 ~~such that~~ land, or to ~~such that~~ city or town, for treble the amount
2 of damages ~~which that~~ may be assessed therefor; in a civil action;
3 in any ~~Court~~ court having jurisdiction.

4 (b) *This section shall not apply to damages caused by any*
5 *wildfire, other than an arson fire.*

6 *SEC. 3. Section 13007 of the Health and Safety Code is*
7 *amended to read:*

8 13007. (a) Any person who ~~personally or through another~~
9 ~~wilfully~~, negligently, or in violation of law, sets fire to, allows fire
10 to be set to, or allows a fire kindled or attended by him *or her* to
11 escape to, the property of another, whether privately or publicly
12 owned, is liable to the owner of ~~such that~~ property for any damages
13 to the property caused by the fire.

14 (b) *Any action for damages under this section shall be brought*
15 *within three years of the date of official extinguishment of the fire.*

16 (c) *A public entity shall give notice within 90 days of official*
17 *extinguishment of a fire to any person it has probable cause to*
18 *believe may be liable for damages caused by the fire so that the*
19 *entity may bring a civil action to recover those damages.*

20 *SEC. 4. Section 4435 of the Public Resources Code is amended*
21 *to read:*

22 4435. ~~If any~~ a fire originates from the operation or use of ~~any~~
23 ~~an~~ engine, machine, barbecue, incinerator, railroad rolling stock,
24 chimney, or any other device ~~which that~~ may kindle a fire, ~~the~~
25 ~~occurrence of the fire is prima facie evidence of negligence in the~~
26 ~~maintenance, operation, or use of such engine, machine, barbecue,~~
27 ~~incinerator, railroad rolling stock, chimney, or other device. If such~~
28 ~~and that~~ fire escapes from the place where it originated, and it ~~can~~
29 ~~be determined which is proven that a person's negligence~~
30 ~~proximately caused such that~~ fire, ~~such that~~ person is guilty of a
31 misdemeanor *and may be held civilly liable for his or her*
32 *negligence.*

33 *SEC. 5. If the Commission on State Mandates determines that*
34 *this act contains costs mandated by the state, reimbursement to*
35 *local agencies and school districts for those costs shall be made*
36 *pursuant to Part 7 (commencing with Section 17500) of Division*
37 *4 of Title 2 of the Government Code.*

38 ~~SECTION 1. Section 4515 of the Public Resources Code is~~
39 ~~amended to read:~~

1 ~~4515. The board shall submit to the Legislature on August 1st~~
2 ~~of each year a report on the actions taken pursuant to this chapter~~
3 ~~during the preceding fiscal year. The report shall include a~~
4 ~~statement of the actions, including legislative recommendations~~
5 ~~that are necessary to more fully carry out the purposes and~~
6 ~~requirements of this chapter.~~

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