



## 100TH GENERAL ASSEMBLY

### State of Illinois

### 2017 and 2018

### HB3286

by Rep. Kelly M. Cassidy

#### SYNOPSIS AS INTRODUCED:

|                      |                            |
|----------------------|----------------------------|
| 740 ILCS 185/1       | from Ch. 96 1/2, par. 9401 |
| 740 ILCS 185/2       | from Ch. 96 1/2, par. 9402 |
| 740 ILCS 185/2.5 new |                            |
| 740 ILCS 185/2.6 new |                            |
| 740 ILCS 185/2.8 new |                            |
| 740 ILCS 185/3       | from Ch. 96 1/2, par. 9403 |
| 740 ILCS 185/3.5 new |                            |
| 740 ILCS 185/4       | from Ch. 96 1/2, par. 9404 |
| 740 ILCS 185/4.5 new |                            |
| 740 ILCS 185/4.7 new |                            |

Amends the Wrongful Tree Cutting Act. Changes the definition of "stumpage". Defines "protected land" and "qualified professional forester or ecological restoration professional". Provides that any party found to have intentionally cut or knowingly caused to be cut any standing timber or tree, other than a tree or woody plant referenced in the Illinois Exotic Weed Act, on protected land, and the party did not have the legal right to so cut or cause to be cut, must pay the person or entity that owns or holds a conservation right to the land 3 times stumpage value plus remediation costs. Provides that nothing in the Act limits the rights of a party to pursue causes of action under other laws, including any available common law remedies for damages. Limits the relief available under the Act. Provides that the court shall allow a plaintiff who prevails to recover the cost of expenses incurred. Makes changes in provisions concerning appraisals and findings of value and expenses. Adds provisions concerning: remediation plans; court-ordered determinations of costs; assistance by the Department of Natural Resources; and use of awards under the Act. Makes other changes. Effective immediately.

LRB100 06772 HEP 16815 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Wrongful Tree Cutting Act is amended by  
5 changing Sections 1, 2, 3, and 4 and by adding Sections 2.5,  
6 2.6, 2.8, 3.5, 4.5, and 4.7 as follows:

7 (740 ILCS 185/1) (from Ch. 96 1/2, par. 9401)

8 Sec. 1. As used in this Act, unless the context otherwise  
9 requires, the term:

10 (a) "Stumpage value" means the value of timber as it stands  
11 uncut in terms of an amount per unit of volume expressed as  
12 dollar value per board foot for that portion of a tree or  
13 timber deemed merchantable by Illinois forest products markets  
14 ~~standing tree.~~

15 (b) "Department" means the Department of Natural  
16 Resources.

17 (c) "Director" means the Director of Natural Resources.

18 (d) "Party" means any person, partnership, firm,  
19 association, business trust or corporation.

20 (e) "Protected land" means land in public or private  
21 ownership that is:

22 (1) subject to a permanent conservation right  
23 consistent with the Real Property Conservation Rights Act;

1           (2) registered or designated as a Nature Preserve,  
2           buffer or Land and Water Reserve under the Illinois Natural  
3           Areas Preservation Act;

4           (3) owned by a conservation land trust meeting  
5           requirements as set forth in Section 501(c) of the United  
6           States Internal Revenue Code; or

7           (4) owned by a local, State, or federal agency and  
8           primarily used for one or more conservation purposes, such  
9           as wildlife habitat, erosion control, energy conservation,  
10           natural community restoration, general reforestation,  
11           timber production, or research.

12           (f) "Qualified professional forester or ecological  
13           restoration professional" means a person who holds any  
14           necessary licenses and has performed the type of remediation  
15           work necessary as part of the person's profession for greater  
16           than 30% of his or her working hours during each of the  
17           preceding 3 years.

18           (Source: P.A. 89-445, eff. 2-7-96.)

19           (740 ILCS 185/2) (from Ch. 96 1/2, par. 9402)

20           Sec. 2. Except as provided in Sections 2.5, 2.7, and 7, any  
21           ~~Any~~ party found to have intentionally cut or knowingly caused  
22           to be cut any timber or tree, other than a tree or woody plant  
23           referenced in the Illinois Exotic Weed Act, which he or she did  
24           not have the ~~full~~ legal right to cut or cause ~~caused~~ to be cut  
25           shall pay the owner of the timber or tree 3 times its stumpage

1 value.

2 (Source: P.A. 84-138.)

3 (740 ILCS 185/2.5 new)

4 Sec. 2.5. Trees intentionally cut or knowingly caused to be  
5 cut on protected land. Any party found to have intentionally  
6 cut or knowingly caused to be cut any standing timber or tree,  
7 other than a tree or woody plant referenced in the Illinois  
8 Exotic Weed Act, on protected land, which he or she did not  
9 have the legal right to so cut or cause to be cut, must pay 3  
10 times stumpage value plus remediation costs to the party that  
11 owns an interest in the land, including but not limited to  
12 holding a conservation right to the land. Remediation costs  
13 include one or more of the following:

14 (1) cleanup to remove trees, portions of trees, or  
15 debris from trees cut, damaged, moved, placed, or left as a  
16 result of tree cutting from perennial drainage ways or  
17 water holding basins;

18 (2) soil erosion stabilization and remediation for  
19 issues that were not pre-existing;

20 (3) remediation of damages to the native standing trees  
21 and other native woody or herbaceous plant understory;

22 (4) remediation of damages to the native tree  
23 understory through coppicing, planting of potted native  
24 trees, planting of native tree seedlings as individual  
25 practices or in combination as deemed appropriate under

1 Section 3.5 of this Act. Any work under this item (4) must  
2 be done by a qualified professional forester or ecological  
3 restoration professional;

4 (5) associated exotic invasive plant species control  
5 for a period of 3 years with one treatment per year on  
6 those portions of the property where trees were wrongfully  
7 cut if prior to the encroachment there had been an active  
8 and ongoing effort made to control the plants, and due to  
9 the disturbance, advantage was given to pre-existing or new  
10 exotic invasive plant growth. Exotic plant control must be  
11 done by a qualified professional forester or ecological  
12 restoration professional;

13 (6) seeding of annual grass to skid trails; or

14 (7) staff salaries, contractor fees, and materials as  
15 directly related, documented, and required to address  
16 remediation costs under this Section.

17 (740 ILCS 185/2.6 new)

18 Sec. 2.6. Remediation plan. The court may order parties  
19 that seek remediation costs for damage to protected land under  
20 Section 2.5 to develop a remediation plan pursuant to Section  
21 3.5 of this Act. The remediation plan shall delineate the steps  
22 to address remediation costs identified under Section 2.5 of  
23 this Act.

24 (740 ILCS 185/2.8 new)

1       Sec. 2.8. Remedies. Nothing in this Act limits the rights  
2 of a party to pursue causes of action under other laws,  
3 including any available common law remedies for damages. A  
4 plaintiff may bring an action and recover damages under any  
5 applicable Section of this Act; however, if more than one  
6 Section applies to a given wrongfully cut tree, the plaintiff  
7 may bring an action and recover damages under only one  
8 applicable Section of this Act.

9           (740 ILCS 185/3) (from Ch. 96 1/2, par. 9403)

10       Sec. 3. The courts of this State may order the Director or  
11 his representative to secure 3 ~~three~~ independent value  
12 appraisals to determine the stumpage value of wrongfully cut  
13 timber or trees under Section 2 of this Act. Such order must  
14 ~~shall~~ state the reason the value information is needed, the  
15 parties involved in the action, the area to be examined and  
16 other information needed by the Department to carry out its  
17 responsibilities. The court must instruct all ~~All~~ parties to  
18 the court action ~~shall be instructed~~ to make themselves  
19 available to the Department at reasonable times to assist in  
20 the location of areas and material to be examined. Unless  
21 otherwise ordered by the court, the parties shall bear equally  
22 the cost of expenses ~~Expenses~~ incurred, including but not  
23 limited to those for surveys, consulting services, attorney's  
24 fees, and administrative costs, ~~shall be borne equally by the~~  
25 ~~parties unless otherwise ordered by the court.~~ The court shall

1 allow a plaintiff who prevails to recover the cost of expenses  
2 incurred.

3 (Source: P.A. 84-138.)

4 (740 ILCS 185/3.5 new)

5 Sec. 3.5. Court-ordered determination of costs. The court,  
6 upon evaluating whether independent appraisals are necessary  
7 and appropriate in matters arising under Section 2.5 of this  
8 Act, may order up to 3 independent appraisals of stumpage  
9 value, and further order the development of a plan detailing  
10 remediation strategies and their estimated cost, in  
11 conformance with Section 2.6 of this Act. Appraisals of  
12 stumpage value must be conducted by a professional consulting  
13 forester, who is and has been practicing his or her profession  
14 for a minimum of 50% of his or her working hours for the  
15 previous 3 years. Remediation plans must be prepared in  
16 consultation with a professional forester or biologist  
17 experienced in ecosystem restoration following a timber  
18 harvest, and may be implemented by the landowner or the  
19 landowner's designee. The court shall determine which party  
20 will bear the expense of conducting the appraisals and  
21 developing the remediation plan. The court may request that the  
22 Director or his or her representative assist in securing  
23 independent appraisals and advise the court as to adequacy of  
24 costs and measures in the remediation plan. The court shall  
25 allow a plaintiff who prevails to recover the cost of expenses

1 incurred.

2 (740 ILCS 185/4) (from Ch. 96 1/2, par. 9404)

3 Sec. 4. Within 90 ~~30~~ days after the Department is ordered  
4 to establish value appraisals under Section 3, it shall notify  
5 the court of its findings of value and expenses. The court  
6 shall then average the appraisals and award triple the average  
7 value and make final determination as to which party or parties  
8 shall pay expenses. The failure of any party to make full  
9 payment within the time limits set by the court or to cooperate  
10 with the Department shall be considered contempt of court.

11 (Source: P.A. 84-138.)

12 (740 ILCS 185/4.5 new)

13 Sec. 4.5. Department assistance. If the court requests  
14 assistance from the Department pursuant to Section 3.5 of this  
15 Act, within 90 days after the Department is provided  
16 independent appraisals and remediation plans for review, the  
17 Department shall provide the appraisals or valuations,  
18 remediation plan, and advice to the court. Otherwise, the  
19 parties shall directly provide the court with any ordered  
20 appraisals or valuations and a remediation plan pursuant to  
21 Section 3.5 of this Act. The court shall then make a final  
22 determination on the adequacy of the remediation plan and the  
23 appraised value to address remediation costs under Section 2.5  
24 of this Act. The court shall award triple the stumpage value



1 plus remediation costs and expenses in accordance with any  
2 approved remediation plan.

3 (740 ILCS 185/4.7 new)

4 Sec. 4.7. Use of award. Monetary awards for remediation  
5 costs of wrongfully cut trees under Section 2.5 of this Act  
6 must be used for costs related to remediation, restoration, or  
7 enhancement of the conservation value of the impacted property  
8 for protection, restoration, or enhancement. This Section does  
9 not apply to the use of awards for the stumpage value of trees  
10 wrongfully cut.

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.