

2017 -- H 5116

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO PROPERTY - TRESPASS AND ACTIONS FOR POSSESSION

Introduced By: Representatives Keable, Kennedy, Edwards, Canario, and Blazejewski

Date Introduced: January 13, 2017

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 34-20 of the General Laws entitled "Trespass and Actions for
2 Possession" is hereby amended by adding thereto the following section:

3 **34-20-1.1. Damages for willful encroachment on state, municipal or nonprofit land**
4 **conservation organization open space land - Civil Action.**

5 (a) Definitions: As used in this section, the following words and terms shall have given to
6 them the meanings set forth below, unless the context indicates another or different meaning or
7 intent.

8 (1) "Open space land" means and includes, but is not limited to, any park, forest, wildlife
9 management area, refuge, preserve, sanctuary, green or wildlife area owned by the state, a
10 political subdivision of the state or a nonprofit land conservation organization.

11 (2) "Encroach" means to conduct an activity that causes damage or alteration to the land
12 or vegetation or other features thereon, including, but not limited to, erecting buildings or other
13 structures, constructing roads, driveways or trails, destroying or moving stone walls, cutting trees
14 or other vegetation, removing boundary markers, installing lawns or utilities, or using, storing, or
15 depositing vehicles, materials or debris.

16 (b) No person may encroach or cause another person to encroach on open space land or
17 on any land for which the state, a political subdivision of the state or a nonprofit land
18 conservation organization holds a conservation easement interest, without permission of the
19 owner of such open space land or holder of such conservation easement or without other legal

1 authorization.

2 (c) Any owner of open space land, or holder of an interest in a conservation easement
3 subject to the provisions of subsection (b) of this section, may bring an action in the superior
4 court for the county where the land is located against any person who knowingly and
5 intentionally violates the provisions of subsection (b) of this section with respect to such owner's
6 land or land subject to such conservation easement. The court shall order any person who
7 knowingly and intentionally violates the provisions of subsection (b) of this section to restore the
8 land to its condition as it existed prior to such violation or shall award the landowner the costs of
9 such restoration, including reasonable management costs necessary to achieve such restoration. In
10 addition, the court may award reasonable attorney's fees and costs and such injunctive or
11 equitable relief as the court deems appropriate.

12 (d) In addition to any damages and relief ordered pursuant to subsection (c) of this
13 section, the court may award damages of up to five (5) times the cost of restoration or statutory
14 damages of up to five thousand dollars (\$5,000). In determining the amount of the award, the
15 court shall consider the willfulness of the violation, the extent of damage done to natural
16 resources, if any, the appraised value of any trees or shrubs cut, damaged, or carried away as
17 determined in accordance with the latest revision of The Guide for Plant Appraisal, as published
18 by the International Society of Arboriculture, Urbana, Illinois, or a succeeding publisher, any
19 economic gain realized by the violator, and any other relevant factors.

20 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would prohibit encroachment upon open space land and would allow the owner
2 of open space land or the holder of a conservation easement to bring a civil action in superior
3 court to remedy the encroachment of that land, and to recover damages resulting from this
4 encroachment.

5 This act would take effect upon passage.

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