

2018 -- S 2682

LC005243

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO PROPERTY - TRESPASS AND ACTIONS FOR POSSESSION

Introduced By: Senators Sosnowski, P Fogarty, Goodwin, and Gallo

Date Introduced: March 20, 2018

Referred To: Senate 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) "Encroach" means to conduct an activity that causes substantial damage or alteration
9 to the land or vegetation or other features thereon, including, but not limited to, erecting buildings
10 or other structures, constructing roads, driveways or trails, destroying or moving stone walls,
11 cutting trees or other vegetation, other than de minimus cutting, removing boundary markers,
12 installing lawns or utilities, or using, storing, or depositing vehicles, substantial amounts of
13 materials or debris.

14 (2) "Nonprofit land conservation organization" means a not-for-profit entity organized
15 with a mission of permanently protecting open space land for conservation purposes.

16 (3) "Open space land" means and includes, but is not limited to, any park, forest, wildlife
17 management area, refuge, preserve, sanctuary, green or wildlife area owned, or held pursuant to a
18 conservation restriction as defined in § 34-39-1 et seq., by the state, a political subdivision of the
19 state, or a nonprofit land conservation organization.

1 (b) No person may encroach or cause another person to encroach on open space land
2 without permission of the owner of such open space land or holder of such conservation
3 restriction on said open space land or without other legal authorization.

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
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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 restriction 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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