
HOUSE BILL 2941

State of Washington 55th Legislature 1998 Regular Session

By Representatives Sheahan, Kessler, Crouse, Lantz and Bush

Read first time 01/23/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to limiting the liability of utilities for efforts
2 undertaken to protect their facilities from adjacent vegetation;
3 amending RCW 64.12.040; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds:

6 (a) Utilities that provide service for the public necessity and
7 convenience, particularly electric utilities, maintain facilities in
8 rights of way and where easements, both acquired and implied, exist;

9 (b) Vegetation growth on state lands and private properties
10 adjacent to utility facilities can cause damage to utility facilities
11 and pose public safety concerns where such vegetation grows or falls
12 into these facilities;

13 (c) When vegetation from adjacent land or property causes damage to
14 utility facilities, utility service to customers might be disrupted,
15 collateral damage might occur to other properties, and the general
16 public might be placed in imminent danger;

17 (d) In *Sherrell v. Selfors*, 73 Wn. App. 596 (1994), the court
18 delineated appropriate and specific damages to be awarded for damages
19 to different forms of trees, timber, and shrubs; and

1 (e) In *Birchler v. Castello Land Co.*, 81 Wn. App. 603 (1996), the
2 court awarded damages for emotional distress for a violation of RCW
3 64.12.030, the timber trespass statute.

4 (2) The legislature declares:

5 (a) Utilities have a dual interest in protecting their facilities
6 from potential damages caused by vegetation on adjacent lands or
7 properties and preserving service continuity and reliability for the
8 customer;

9 (b) The cutting or removal of trees, timber, and shrubs by a
10 utility from adjacent lands or properties is done to protect the
11 utility's facilities, to maintain service continuity and reliability,
12 and to protect the general public, not for commercial or profit-
13 motivated purposes;

14 (c) Utilities should not be liable for treble damages and special
15 damages for emotional distress when the utility removes or cuts
16 vegetation in order to protect their facilities and maintain service
17 reliability;

18 (d) Electric utilities should be immune from liability for cutting
19 or removing from adjacent lands or properties vegetation that has
20 trespassed upon or damaged utility facilities; and

21 (e) Allowable damages as set forth in *Sherrell v. Selfors* should be
22 codified.

23 **Sec. 2.** RCW 64.12.040 and Code 1881 s 603 are each amended to read
24 as follows:

25 (1) If upon trial of such action it shall appear that the trespass
26 was casual or involuntary, or that the defendant had probable cause to
27 believe that the land on which such trespass was committed was his or
28 her own, or that of the person in whose service or by whose direction
29 the act was done, or that such tree or timber was taken from uninclosed
30 woodlands, for the purpose of repairing or maintaining any public
31 highway, utility facility, or bridge upon the land or adjoining it,
32 judgment shall only be given for single compensatory economic damages.

33 (2) A utility is immune from any liability under RCW 64.12.030 and
34 this section when it cuts or removes any trees, timber, or shrubs that
35 have trespassed onto or damaged utility facilities.

36 (3) For the purposes of this section:

37 (a)(i) "Compensatory economic damages" means restoration and
38 replacement value, stumpage value, production value, or lost profit, as

1 appropriate and applicable to residential and recreational property,
2 commercial timber, commercial productive fruit trees, or Christmas
3 trees intended to be sold at market unless the damage is caused to
4 natural vegetation.

5 (ii) Compensatory economic damages allowable for natural vegetation
6 loss are stumpage value only;

7 (b) "Natural vegetation" means a tree indigenous to the area in
8 which it has grown and is of such age and condition that it can be
9 reasonably determined to have grown naturally in its present location
10 and it was not planted for the purposes of residential aesthetics, or
11 commercial, production, or retail sale; and

12 (c) "Utility facility" means lines, conduits, ducts, poles, wires,
13 conductors, cables, cross-arms, receivers, transmitters, transformers,
14 instruments, machines, appliances, instrumentalities, and all devices,
15 real estate, easements, apparatus, property, and routes used, operated,
16 owned, or controlled by an electric utility, natural gas, or
17 telecommunications company, for the purposes of manufacturing,
18 transmitting, distributing, selling, or furnishing electricity, natural
19 gas, or telecommunications services.

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