1	L.D. 670
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3	JUDICIARY
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5	STATE OF MAINE
6	HOUSE OF REPRESENTATIVES
7	127TH LEGISLATURE
8	FIRST REGULAR SESSION
9 10	COMMITTEE AMENDMENT " " to H.P. 451, L.D. 670, Bill, "An Act To Amend the Laws Governing the Unlawful Cutting of Trees"
11 12	Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:
13 14	'Sec. 1. 14 MRSA §7552, sub-§3, ¶B, as amended by PL 1999, c. 339, §1, is repealed and the following enacted in its place:
15 16	B. Except within areas that have been zoned for residential use, for lost trees the owner may choose to claim:
17	(1) The market value of the lost trees;
18 19	(2) The diminution in value of the real estate as a whole resulting from the violation;
20 21	(3) The forfeiture amounts determined in Title 17, section 2510, subsections 2 and 3; or
22 23 24	(4) If the lost trees are ornamental or fruit trees, the costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting.
25 26 27	In addition, the owner's damages for lost trees that are not ornamental or fruit trees may include the costs for regeneration of the stand in accordance with Title 12, section 8869.
28 29	The court may reduce the damages awarded for good cause shown when the cutting of trees was done negligently or without fault.
30 31 32	Public utilities, as defined in Title 35-A, section 102, and contractors performing work for public utilities are not liable for damages under this paragraph for lost trees the trimming or removal of which is necessary to provide safe and reliable service to the customers of the public utilities.

1	Sec. 2. 14 MRSA §7552, sub-§3, ¶B-1 is enacted to read:
2 3	B-1. Within areas that have been zoned for residential use, for lost trees the owner may choose to claim:
4 5 6	(1) The costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting;
7	(2) The market value of the lost trees;
8 9	(3) The diminution in value of the real estate as a whole resulting from the violation; or
10 11	(4) The forfeiture amounts determined in Title 17, section 2510, subsections 2 and 3.
12 13 14 15	Public utilities, as defined in Title 35-A, section 102, and contractors performing work for public utilities are not liable for damages under this paragraph for lost trees the trimming or removal of which is necessary to provide safe and reliable service to the customers of the public utilities.
16	Sec. 3. 14 MRSA §7552, sub-§4, ¶D is enacted to read:
17 18	D. A person who with malice violates subsection 2 is subject to punitive damages in addition to the damages under paragraphs A, B and C.
19 20	Sec. 4. 14 MRSA §7552, sub-§5, as enacted by PL 1995, c. 450, §2, is amended to read:
21 22 23 24	5. Costs and fees. In addition to damages, interest and costs, the owner may also recover from the person who violates subsection 2 the reasonable costs of professional services necessary for determining damages and proving the claim, provided that as long as the person first has written notice or actual knowledge that a claim is being asserted.
25 26 27	The amount awarded for professional services may not exceed 50% of the damages recovered pursuant to subsection 4 plus interest on the damages. Interest may be assessed after service of a notice of claim pursuant to section 1602.
28	SUMMARY
29 30	This amendment replaces the bill to clarify the language regarding damages for the unlawful cutting of trees.
31 32 33 34	The amendment makes a distinction between the unlawful cutting of trees in areas zoned for residential use and the unlawful cutting of trees in other areas. It also makes a distinction between the unlawful cutting of ornamental or fruit trees and the unlawful cutting of all other trees.
35 36	If a person cuts down or damages trees without permission on land the person does not own, the person is liable to the owner for damages.
37 38	The amendment makes it clear that the owner of land that is not zoned for residential use may choose how damages are measured. The owner may choose to have the damages

calculated based on: the market value of the lost trees; the diminution in value of the real estate as a whole resulting from the unlawful cutting of the trees; the forfeiture amounts determined in the Maine Revised Statutes, Title 17, section 2510, subsections 2 and 3; or, if the lost trees are ornamental or fruit trees, the costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting. If the trees are not ornamental or fruit trees, the owner may claim in addition the costs for regeneration of the stand in accordance with Title 12, section 8869. The court may reduce the damages awarded for good cause shown when the cutting of trees was done negligently or without fault.

The amendment further provides that the owner of land that is zoned for residential use may choose how damages are measured. The owner may choose to have the damages calculated based on: the market value of the lost trees; the diminution in value of the real estate as a whole resulting from the unlawful cutting of the trees; the forfeiture amounts determined in Title 17, section 2510, subsections 2 and 3; or, regardless of whether the lost trees are ornamental or fruit trees, the costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting.

Current law establishes recoverable damages based on the manner in which the owner has claimed damages and multiplied by 2 if the unlawful cutting was negligent or without fault, and multiplied by 3 if the person acted intentionally or knowingly. This amendment authorizes an additional award of punitive damages if the person acted with malice.

The amendment deletes the cap on the recovery of costs of professional services for asserting a claim, including attorney's fees. It also repeals a reference to interest on damages because the current general law allows the award of prejudgment and post-judgment interest in all cases as provided in Title 14, sections 1602-B and 1602-C, respectively.

The amendment provides that public utilities and their contractors are not liable for damages when the cutting or removal of trees is necessary to improve the safety and reliability of the public utilities' delivery of products and services.