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## OLR Bill Analysis

### HB 7138

#### ***AN ACT CONCERNING A PROPERTY OWNER'S LIABILITY FOR THE EXPENSES OF REMOVING A FALLEN TREE OR TREE LIMB.***

#### **SUMMARY**

This bill establishes conditions under which a private real property owner ("landowner"), other than someone age 64 or older whose income is below the area median income, is presumed liable for the expenses of removing a tree or tree limb that fell from his or her property onto an adjoining private owner's land.

It generally makes the landowner liable for failing to act within 90 days after the adjoining owner notified him or her that, based on an arborist's inspection, a tree or limb was likely to fall within five years. The bill specifies how the presumption may be rebutted.

Among other things, it also (1) exempts certain property from its provisions, such as property owned by nonprofits, and (2) allows an insurance company, when paying for a related claim, to deduct any amount the adjoining landowner recovers under the bill.

EFFECTIVE DATE: October 1, 2025

#### **LIABILITY FOR REMOVING FALLEN TREES**

##### ***Presumption of Liability***

Under the bill, a private landowner is generally presumed liable for the expenses of removing a tree or tree limb that fell from his or her property onto an adjoining private owner's land if, before the tree or limb fell:

1. a licensed arborist inspected the tree and documented that the tree or a limb was diseased, decayed, or damaged and likely to fall within five years of the inspection;

2. the adjoining private property owner notified the landowner of this determination and requested that the landowner cure the condition by any appropriate method (including removing, pruning, or spraying the tree); and
3. the landowner failed to do so within 90 days after receiving this notice.

The notice must be in writing and sent by certified mail, return receipt requested. The bill specifies that this notice is deemed personal to the owner who gave it and does not run with the land (that is, the presumption of liability would not apply if the owner giving the notice sold the property before the tree fell, unless the new owner gave his or her own notice).

But the bill does not allow liability under these provisions to be imposed on a landowner who is age 64 or older and whose median income is below that of the municipality's area (as determined by the U.S. Department of Housing and Urban Development).

### ***Rebutting the Presumption***

The bill's presumption of liability may be rebutted if the landowner shows that:

1. after he or she received the notice, a licensed arborist inspected the tree or limb and documented that it was not diseased, decayed, or damaged and likely to fall or
2. the tree or limb fell due to a reason other than the condition described in the notice, including a motor vehicle collision, fire, lightning, or another act of God.

### ***Private Real Property***

The bill's provisions apply only to trees on "private real property" that fall onto other private real property. Under the bill, this property does not include:

1. real property owned by the state, a political subdivision of the

- state, a water company, or a tax-exempt nonprofit organization;
- 2. real property subject to a conservation easement held by a tax-exempt nonprofit organization;
- 3. timber land of more than 10 years' growth; or
- 4. farm, forest, or open space land eligible for the "PA 490 program" (which allows this land to be assessed for property tax purposes based on its current use value rather than its fair market value).

### ***Arborist Access and Impact on the Presumption***

The bill provides that:

- 1. landowners are not required to allow access to their property for an arborist's inspection and
- 2. if an arborist is unable to access the property, this does not waive the requirement for the arborist's determination as described above to establish the presumption.

### ***Insurance and Other Remedies***

The bill allows an insurance company to deduct from a payment under a liability policy the amount the policyholder recovers under the bill, to the extent that amount would be a covered loss under the policy. It does not otherwise affect a policyholder's rights under a liability policy.

The bill also specifies that it does not limit anyone's right to pursue other civil remedies as allowed by law.

## **BACKGROUND**

### ***Related Case Law***

While not binding on other courts, recent state Superior Court cases have concluded that, based on the Restatement (Second) of Torts, there is generally no liability between private landowners for damage caused by natural conditions on the land, including damage caused by a falling tree (see, e.g., *Jarrett v. Lovallo*, Superior Court, judicial district of

Stamford, Docket No. CV-22-5027261-S, 2024 WL 4893280 (Nov. 21, 2024) (unreported)).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 35 Nay 4 (04/10/2025)