

HOUSE BILL No. 5469

December 1, 2005, Introduced by Reps. Walker, Elsenheimer, Palsrok, Stahl, Pastor, Moolenaar, Gillard, Hune, Gaffney, Hildenbrand, Ward, Nitz, Emmons, Proos, Pavlov, Jones, Booher, Casperson, Huizenga, Hansen, Mayes, Byrnes, Brown, Nofs, Newell, Brandenburg, Farhat, Vander Veen, Caswell, Hummel and Sheltroun and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 2919 and 2973 (MCL 600.2919 and 600.2973), section 2973 as added by 2002 PA 209.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2919. (1) Any person who ~~+~~

2 ~~—(a)—~~ cuts down or carries off ~~any~~ wood, underwood, trees, or

3 timber or despoils or injures any trees on another's ~~lands~~ **LAND**,

4 ~~or~~

5 ~~—(b)—~~ digs up or carries away stone, ore, gravel, clay, sand,

6 turf, or mould or any root, fruit, or plant from another's ~~lands~~

7 **LAND**, ~~or~~

8 ~~—(c)—~~ cuts down or carries away ~~any~~ grass, hay, or any kind

9 of grain from another's ~~lands~~ **LAND** without the permission of the

1 owner of the ~~lands~~ **LAND**, or on the ~~lands~~ **LAND** or commons of
 2 ~~any~~ **A** city, township, village, or other public corporation without
 3 license to do so, **OR DAMAGES OR DESTROYS AN AGRICULTURAL CROP OR**
 4 **PART OF AN AGRICULTURAL CROP ON ANOTHER'S LAND WITHOUT THE**
 5 **PERMISSION OF THE OWNER OF THE CROP** is liable to the owner of the
 6 land **OR AGRICULTURAL CROP** or the public corporation for 3 times the
 7 amount of actual damages **AND REASONABLE ATTORNEY FEES.** ~~if~~ **EXCEPT**
 8 **FOR AN ACTION FOR DAMAGING OR DESTROYING ALL OR PART OF AN**
 9 **AGRICULTURAL CROP ON ANOTHER'S LAND, IF** upon the trial of an action
 10 under this provision or any other action for trespass on ~~lands~~
 11 **LAND** it appears that the trespass was casual and involuntary, ~~or~~
 12 that the defendant had probable cause to believe that the land on
 13 which the trespass was committed was his **OR HER** own, or that the
 14 wood, trees, or timber taken were taken for the purpose of making
 15 or repairing ~~any~~ **A** public road or bridge, judgment shall be given
 16 for the amount of single damages only.

17 (2) ~~(a) Any~~ **A** guardian, tenant in dower, life tenant, or
 18 tenant for years who commits or suffers ~~any~~ waste ~~—~~ during his
 19 **OR HER** term or estate ~~—~~ to the ~~lands~~ **LAND**, tenements, or
 20 hereditaments, without having a lawful license to do so ~~—~~ is
 21 liable for double the amount of actual damages. Any joint tenant or
 22 tenant in common who commits or suffers waste of the ~~lands~~ **LAND**,
 23 tenements, or hereditaments held in joint tenancy ~~—~~ without
 24 having a lawful license in writing to do so ~~—~~ is liable for
 25 double the amount of actual damages at the suit of his **OR HER**
 26 cotenant.

27 (3) ~~(b)~~ **A** claim under ~~this provision~~ **SUBSECTION (2)** may be

1 brought by the person having the next immediate estate ~~—~~ in fee ~~—~~
 2 for life, or for years, or by ~~any~~ **A** person who has the remainder
 3 or reversion in fee or for life after an intervening estate for
 4 life or for years. ~~—; and each~~ **EACH** of the parties shall recover
 5 damages according to his **OR HER** estate in the premises. A joint
 6 tenant or tenant in common may bring the claim in case of waste by
 7 ~~one~~ **1** of his **OR HER** joint tenants or tenants in common. An heir,
 8 whether of full age or not, after coming into possession of his **OR**
 9 **HER** inheritance, may maintain a claim for waste done in the time of
 10 his **OR HER** ancestor as well as in his **OR HER** own time, unless
 11 recovery has been had by the executor or administrator of the
 12 ancestor. A tenant who assigns his **OR HER** full interest is not
 13 liable for waste done or suffered by his **OR HER** assignees while he
 14 **OR SHE** remains out of possession of the premises.

15 **(4)** ~~—(3)(a)—~~ The circuit court shall grant injunctions to stay
 16 and prevent threatened trespass when the remedies provided by
 17 subsection (1) ~~—, above,~~ are not fully adequate and in any case
 18 where the trespass is of a continuing nature.

19 **(5)** ~~—(b) In—~~ **THE CIRCUIT COURT MAY GRANT INJUNCTIONS TO STAY**
 20 **AND PREVENT WASTE IN** any case where there is not a plain, adequate,
 21 and complete remedy provided for waste ~~—by—~~ **UNDER** subsection (2) ~~—~~
 22 ~~above,~~ or where waste is threatened. ~~the circuit court may grant~~
 23 ~~injunctions to stay and prevent waste.~~

24 **(6)** ~~—(c) Having taken—~~ **IF THE CIRCUIT COURT TAKES** jurisdiction
 25 of the case **UNDER SUBSECTION (4) OR (5)**, the circuit court may at
 26 the same time dispose of all questions involved, including the
 27 assessing and awarding of money damages.

1 (7) ~~(4)~~ After the commencement of ~~any~~ **AN** action based on a
2 claim for damages for waste, ~~or~~ for the recovery of land, or for
3 the possession of land, the defendant shall not make ~~any~~ waste of
4 the land in demand or premises in question during the pendency of
5 the action. If the defendant commits, threatens to commit, or makes
6 preparations to commit waste, the court in which the action is
7 pending or any circuit judge or circuit court commissioner may
8 make, on the application of the plaintiff, an order restraining the
9 defendant from the commission of any waste or further waste of the
10 land in demand or premises in question. ~~Any~~ **A** person ~~violating~~
11 **WHO VIOLATES** the terms of ~~any such~~ **AN** order **ISSUED UNDER THIS**
12 **SUBSECTION** is guilty of ~~a~~ contempt of the court in which the
13 action is pending, ~~which is~~ punishable as **IN** other cases of
14 contempt.

15 (8) ~~(5)~~ If ~~any~~ **A** person commits, threatens to commit, or
16 makes preparations to commit ~~any~~ waste on real estate ~~which~~
17 **THAT** has been attached or levied upon by execution in any civil
18 action, the court from which the execution or attachment issued or
19 any circuit judge or circuit court commissioner may make, on the
20 application of the plaintiff, an order restraining the person from
21 committing ~~any~~ waste or further waste on the land ~~which~~ **THAT**
22 has been attached or levied upon. ~~Any~~ **A** person who ~~shall violate~~
23 **VIOLATES** the terms of ~~any such~~ **AN** order **ISSUED UNDER THIS**
24 **SUBSECTION** is guilty of contempt of the court in which the action
25 is pending, ~~and is~~ punishable as in other cases of contempt.

26 (9) ~~(6)(a)~~ If, at any time after the sale of real estate on
27 execution and before a deed is executed in pursuance of the sale,

1 the defendant in the execution or any other person commits waste on
 2 the real estate or removes from it any buildings, fences, or other
 3 fixtures belonging to the land ~~which~~ **THAT** would pass to the
 4 grantee by a deed of conveyance of the land, the purchaser at the
 5 sale or any person who has acquired his **OR HER** rights may have and
 6 maintain, against the person doing the injury and against any other
 7 person who has the buildings, fences, or fixtures in his **OR HER**
 8 possession after their removal, the same actions ~~which~~ **THAT** the
 9 absolute owner of the premises would be entitled to.

10 (10) ~~(b)~~ Whenever ~~any~~ lands or tenements are sold by
 11 virtue of an execution issued upon ~~any~~ **A** judgment, the person to
 12 whom the conveyance is executed by the sheriff pursuant to the sale
 13 has a claim for damages for ~~any~~ waste committed on the premises
 14 by any person after the sale.

15 (11) ~~(c)~~ ~~Any~~ **A** person entitled to the possession of ~~lands~~
 16 **LAND** or tenements sold under execution may use and enjoy the
 17 premises until the period of redemption has run in the following
 18 ways without being guilty of waste:

19 (A) ~~(i)~~ ~~He may in all cases~~ **THE PERSON MAY** use and enjoy the
 20 premises sold in the same manner and for the same purposes in and
 21 for which they were used and enjoyed prior to the sale, doing no
 22 permanent injury to the freehold. →

23 (B) ~~(ii)~~ If the premises sold were buildings or other
 24 erections ~~he~~ **STRUCTURES, THE PERSON** may make necessary repairs to
 25 them, although ~~he~~ **THE PERSON** shall not make alterations in the
 26 form or structure of them. →

27 (C) ~~(iii)~~ If the premises sold were land, ~~he~~ **THE PERSON** may

1 use and improve the land in the ordinary course of husbandry, but
2 ~~he shall not be~~ **IS NOT** entitled to any crops growing on the
3 premises at the expiration of the period of redemption. →

4 (D) ~~(iv) He~~ **THE PERSON** may apply ~~any~~ wood or timber on the
5 land to the necessary repair of any fences, buildings, or ~~erections~~
6 ~~which~~ **STRUCTURES THAT** were on the premises at the time of sale. →

7 (E) ~~(v) If he~~ **THE PERSON** is in actual occupation of the
8 land sold, he **OR SHE** may take necessary firewood from the land for
9 the use of his **OR HER** family.

10 Sec. 2973. (1) A person who intentionally **OR NEGLIGENTLY**
11 damages or destroys all or part of a field crop belonging to
12 another person produced for crop research or testing purposes is
13 liable in a civil action for damages and costs and fees as further
14 described in subsection (2).

15 (2) The court shall award damages as well as costs and fees
16 associated with an action brought under subsection (1) to a
17 prevailing plaintiff in the following amounts:

18 (a) ~~Twice~~ **THREE TIMES** the market value of the field crop
19 damaged or destroyed.

20 (b) If applicable, the value of the crop research or testing.

21 (3) As used in this section:

22 (a) "Costs and fees" means the normal costs incurred in being
23 a party in a civil action after an action has been filed with the
24 court, those provided by law or court rule, and the following:

25 (i) The reasonable and necessary expenses of expert witnesses
26 as determined by the court.

27 (ii) The reasonable cost of any study, analysis, engineering

1 report, test, or project that is determined by the court to have
2 been necessary for the preparation of the party's case.

3 (iii) Reasonable attorney fees.

4 (b) "Crop research or testing" means a crop produced in
5 conjunction with or as part of a private research or testing
6 program or facility or a research or testing program funded by a
7 federal, state, or local governmental agency.

8 (c) "Field crop" means plants that include, but are not
9 limited to, those considered and grown as production crops,
10 ornamentals, vegetables, fruit, turf, horticultural crops,
11 industrial crops, plants grown for the production of
12 pharmaceuticals or similar use, seed production crops, livestock
13 crops, and animal feed crops.