

HB 1298 - AS INTRODUCED

2016 SESSION

16-2319

08/09

HOUSE BILL **1298**

AN ACT relative to damage to private property.

SPONSORS: Rep. Chandler, Carr. 1; Rep. Sanders, Rock. 12; Rep. Theberge, Coos 3; Sen. Forrester, Dist 2; Sen. Bradley, Dist 3

COMMITTEE: Resources, Recreation and Development

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ANALYSIS

This bill creates a cause of action for a landowner whose land is damaged by pollution.

This bill also creates a cause of action for a landowner whose land is damaged by OHRV use.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struck through.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Sixteen*

AN ACT relative to damage to private property.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Subdivision; Landowner's Right of Action. Amend RSA 149-M by inserting after section  
2 60 the following new subdivision:

3 Landowner's Right of Action

4 149-M:61 Landowner's Right of Action.

5 I. Notwithstanding any rules adopted by the department of environmental services, any  
6 ordinance adopted by a municipality, or any provision of law, any person who intentionally or  
7 negligently discharges, spills, releases, pollutes, disposes, dumps, leaks, injects or places oil,  
8 gasoline, diesel fuel, fuel oil, motor oil, automotive oil, gasoline ethers, offensive matter, hazardous  
9 waste, waste, refuse or solid waste as those terms are defined in this chapter, upon the land of  
10 another or in such a manner that it ends up on the land of another, shall be liable to the owner of  
11 the land.

12 II. The owner of the land upon which such discharge is made, which shall include any  
13 person or entity holding a fractional interest, a mortgage interest, or other ownership interest  
14 therein, upon such discharge occurring, may:

15 (a) Commence an action for the cost of cleanup and such damages as may result from  
16 the discharge;

17 (b) Seek injunctive relief enjoining any future such discharge, if it happens that such  
18 future or continuing discharge is imminent or likely;

19 (c) Obtain a writ of mandamus or similar relief ordering the party causing the  
20 discharge to contain, clean up, and remediate the discharge at that party's expense;

21 (d) Obtain multiple damages against the party causing the discharge of up to 3 times  
22 actual damages, based upon the degree of negligence or intentional conduct, as determined by the  
23 trier of fact;

24 (e) Obtain reasonable attorneys' fees and professional fees associated with the  
25 containment, cleanup, and remediation, and the seeking and obtaining relief and damages;

26 (f) Obtain a bond from the person causing the discharge, or other assurances sufficient  
27 to cover the costs of containment, cleanup, and remediation, upon a showing by the owner that  
28 there is a reasonable likelihood of a judgment; and

29 (g) Obtain an attachment, prejudgment attachment, or trustee process in accordance  
30 with RSA 511, RSA 511-A and RSA 512.

31 2 Penalties and Owner/Operator Responsibilities; Roads Included. Amend RSA 215-A:19,

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1 I(a)(1) to read as follows:

2 (1) To the owner of any lands where trees, shrubs, **roads**, or other property have  
3 been damaged as a result of travel over their premises by such vehicles.

4 3 New Subparagraph; Penalties and Owner/Operator Responsibilities; Damage to Private  
5 Property. Amend RSA 215-A:19, V by inserting after subparagraph (e) the following new  
6 subparagraph:

7 (f) The use of the OHRV has resulted in damage to private property.

8 4 New Paragraph; Penalties and Owner/Operator Responsibilities. Amend RSA 215-A:19 by  
9 inserting after paragraph IX the following new paragraph:

10 X. In addition to any other penalty or obligation imposed, the owner of any lands which  
11 have been damaged in violation of this chapter may bring an action to recover such damages, in the  
12 superior court for the county in which the lands are located, against any person who is responsible  
13 and accountable under subparagraphs I(a)(1) and I(a)(2). In bringing such action, the owner shall  
14 be entitled to:

15 (a) The cost of clean-up and restoration to the prior condition of the lands.

16 (b) Multiple damages of up to 3 times actual damages, based upon the recklessness or  
17 severity of the conduct, as determined by the trier of fact.

18 (c) Reasonable attorney's fees necessary to the action.

19 5 Effective Date. This act shall take effect January 1, 2017.