WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED

SENATE BILL NO. 431

(By Senator Helmick, et al)

PASSED February 28, 2002

In Effect from Passage
ENROLLED

Senate Bill No. 431

(BY SENATORS HELMICK, LOVE, ROSS, ANDERSON AND ROWE)

[Passed February 28, 2002; in effect from passage.]

AN ACT to amend and reenact sections four, six and seven, article one-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one as amended; and to further amend said article by adding thereto a new section, designated section twelve-a, all relating to timbering operations and the licensure thereof; establishing modified notification requirements and supervisory requirements for timbering operations; establishing criminal penalties for certain violations of said article; and providing for the enforcement thereof by the division of forestry.

Be it enacted by the Legislature of West Virginia:

That sections four, six and seven, article one-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve-a, all to read as follows:
ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING OPERATIONS.

§19-1B-4. Timbering license required; requirement for license; exemption; annual fee; rules.

(a) No person may conduct timbering operations, purchase timber or buy logs for resale until he or she has obtained the license pursuant to this article from the division and met all other requirements pertaining to his or her timbering operation or other wood product business contained in this article: Provided, That a person who severs or removes, or hires or contracts with another to sever or remove, standing trees from his or her own land is specifically exempted from the timbering operations licensure requirement of this section during any calendar year in which all trees severed or removed by or for this owner have an aggregate stumpage value that does not exceed fifteen thousand five hundred twenty-eight dollars: Provided, however, That a person hired or contracted to sever or remove standing trees from the land of another is specifically exempted from the timbering operations licensure requirement of this section during any calendar year in which all trees severed or removed by this hired or contracted person have an aggregate stumpage value that does not exceed fifteen thousand five hundred twenty-eight dollars.

(b) An applicant for a license shall submit an application on a form to be designed and provided by the director. A fee of fifty dollars shall be submitted with each application and with each annual renewal of the license. The application shall, at a minimum, contain the following information:

(1) Name, address and telephone number of the applicant and if the applicant is a business entity other than a sole proprietor, the names and addresses of the principals, officers and resident agent of the business entity;
(2) The applicant's West Virginia business registration number or a copy of the current West Virginia business registration certificate. The division of forestry shall submit this information and a list of all applicants to the tax commissioner each quarter of the calendar year to ensure compliance with payment of severance, income withholding and all other applicable state taxes; and

(3) Any other information required by the director.

(c) The director shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code which provide procedures by which a license may be acquired, suspended or revoked under this article. The Legislature expressly finds that these legislative rules are the proper subject of emergency legislative rules which may be promulgated in accordance with the provision of section fifteen, article three, section twenty-nine-a of this code.

(d) The director shall prescribe a form providing the contents and manner of posting notice at the timbering operation. The notice shall include, at a minimum, the operator's name and license number.

§19-1B-6. Notification of duration of timbering operations or harvesting of timber for sale; requirements thereof.

(a) In addition to any other requirement of this article, no person may conduct timbering operations and no person may sever trees for sale unless the person notifies the director of the specific location on which the timbering operations or harvesting of timber are to be conducted. The notification shall be made in a manner designated by the director.

(1) All persons who conduct timbering operations or who harvest timber for sale, including those persons who are specifically exempted from the licensure requirements of section four of this article, shall provide to the director of
the division notification of harvesting of timber, which shall include:

(A) The name and address of the harvester of timber;

(B) The name and addresses of the owner or owners of the property upon which the timber is located;

(C) The business tax number or social security number of the harvester of timber; and

(D) An acknowledgment that the harvester of timber will conduct the harvest according to best management practices.

(2) In addition to the requirements of subdivision (1) of this subsection, persons who are subject to the licensure requirements of section four of this article shall provide to the director of the division notification of timbering operations, which shall include, at a minimum, the following:

(A) The specific topographic location where the timbering operations are to be conducted;

(B) The approximate dates that the timbering operation will begin and end;

(C) The approximate acreage over which timbering operations are contemplated;

(D) The names and addresses of the owner or owners of the timber to be harvested and, if different, the names and addresses of the owner or owners of the property upon which the timber is located;

(E) A sketch map of the proposed logging operation, including haul roads, landings and stream crossings;

(F) A description of the sediment control practices to be used by the logger during the timber harvesting operation;
(G) An acknowledgment that the operator will conduct the operations in compliance with the provisions of this article and any applicable rules promulgated pursuant to this article;

(H) A certification satisfactory to the director that all permits required under state law have been obtained or applied for and that all pertinent requirements for obtaining any permit applied for, but not yet obtained, have been complied with; and

(I) The name or names of the person or persons who will be supervising the timbering operations at the site of the operations and his or her logger certification numbers.

(b) The notification shall be made within at least three days of the beginning of the operation.

(c) Further notice shall be given if the operation is to be, for any reason, closed more than seven days before the estimated date for closing provided under paragraph (B), subdivision (2), subsection (a) of this section.

§19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules.

(a) Any individual supervising any licensed timbering operation, or any individual supervising any timbering operation that is not exempted from the licensing requirements set forth in section four of this article, must be certified pursuant to this section.

(b) The director is responsible for the development of standards and criteria for establishment of a regularly scheduled program of education, training and examination that all persons must successfully complete in order to be certified to supervise any timbering operation. The program for certified loggers shall provide, at a minimum, for education and training in the safe conduct of timbering operations, in first aid procedures and in the use of best
management practices to prevent, insofar as possible, soil erosion on timbering operations. The goals of this program will be to assure that timbering operations are conducted in accordance with applicable state and federal safety regulations in a manner that is safest for the individuals conducting the operations and that they are performed in an environmentally sound manner.

(c) The director shall provide for such programs by using the resources of the division, other appropriate state agencies, educational systems and other qualified persons. Each inspector under the jurisdiction of the chief shall attend a certification program free of charge and complete the certification requirements of this section.

(d) The director shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code, which provide the procedure by which certification pursuant to this article may be obtained and shall require the payment of an application fee and an annual renewal fee of fifty dollars.

(e) Upon a person’s successful completion of the certification requirements, the director shall provide that person with proof of the completion by issuing a numbered certificate and a wallet-sized card to that person. The division shall maintain a record of each certificate issued and the person to whom it was issued.

(f) A certification granted pursuant to this section is renewable only for two succeeding years. For the third renewal and every third renewal thereafter, the licensee shall first attend a program designed by the director to update the training.

(g) Every timbering operation that is required to be licensed under section four of this article must have at least one person certified pursuant to this section supervising the operation at any time the timbering operation is being conducted and all timbering operators shall be
guided by the West Virginia forest practice standards and
the West Virginia silvicultural best management practices
in selecting practices appropriate and adequate for
reducing sediment movement during a timber operation.

(h) The director shall, at no more than three-year
intervals after the effective date of this article, convene a
committee to review the best management practices so as
to ensure that they reflect and incorporate the most
current technologies. The committee shall, at a minimum,
include a person doing research in the field of silvicultural
best management practices, a person doing research in the
field of silviculture, two loggers certified under this
article, a representative of the office of water resources of
the division of environmental protection and a representa-
tive of an environmentally active organization. The
director shall chair the committee and may adjust the then
current best management practices according to the
suggestions of the committee in time for the next certifica-
tion cycle.

§19-1B-12a. Criminal penalties.

(a) After the first day of July, two thousand two, any
person who knowingly or willingly commits one of the
following violations is guilty of a misdemeanor, and upon
conviction thereof shall be fined not less than two hundred
fifty dollars and not more than five hundred dollars for
each violation:

(1) Conducts timbering operations or purchases timber
or buys logs for resale in this state without holding a valid
license from the director of the division of forestry, as
required by subsection a, section four of this article;

(2) Conducts timbering operations or severs trees for sale
at a location in this state, without providing the director
of the division of forestry with notice of the location where
the timbering or harvesting operations are to be con-
ducted, as required by section six of this article;
(3) Conducts a timbering operation in this state that is not supervised by a certified logger who holds a valid certificate from the director of the division of forestry, as required by section seven of this article; or

(4) Continues to conduct timbering or logging operations in violation of an existing suspension or revocation order that has been issued by the director of the division of forestry or a conference panel under section five, ten or eleven of this article.

(b) For the purposes of this section, each day that a person conducts logging or timbering operations in this state without a license that is required by this article, without the supervision of a certified logger as required by this article, without providing notice of the location to the director of forestry as required by this article, or in violation of an outstanding suspension or revocation order shall constitute a separate offense.

(c) In addition to any other law-enforcement agencies that have jurisdiction over criminal violations, any forester or forest ranger employed by the division of forestry, who, as a part of his or her official duties is authorized or designated by the director of the division of forestry to inspect logging or timbering activities, is hereby authorized to issue citations for any of the listed violations set forth above that he or she has personally witnessed. The limited authority granted by this section to employees of the division of forestry to issue citations to enforce the provisions of this section does not include the power to place any individual or person under arrest.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ................. approved this the 12th Day of March, 2002.

Governor