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2009 MAY -7 PM 3: 31

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2528**

(By Delegates Morgan, Martin, Argento,
Beach, Caputo, Cann, Eldridge and Andes)



Passed April 11, 2009

In Effect Ninety Days from Passage

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FOR

OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 2528

(BY DELEGATES MORGAN, MARTIN, ARGENTO,
BEACH, CAPUTO, CANN, ELDRIDGE AND ANDES)

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §30-19-1, §30-19-2, §30-19-3, §30-19-4, §30-19-5, §30-19-6, §30-19-7, §30-19-8, §30-19-9, §30-19-10 and §30-19-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto six new sections, designated §30-19-12, §30-19-13, §30-19-14, §30-19-15, §30-19-16 and §30-19-17, all relating to State Board of Registration of Foresters; prohibiting the use of the titles registered forester and registered forestry technician; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rule making authority; continuing a special revenue account; establishing certificate and permit requirements; providing for licensure for persons licensed in another state; establishing renewal requirements; requiring display of license; setting forth grounds for disciplinary actions;

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allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

That §30-19-1, §30-19-2, §30-19-3, §30-19-4, §30-19-5, §30-19-6, §30-19-7, §30-19-8, §30-19-9, §30-19-10 and §30-19-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto six new sections, designated §30-19-12, §30-19-13, §30-19-14, §30-19-15, §30-19-16, and §30-19-17, all to read as follows:

ARTICLE 19. FORESTERS.

§30-19-1. Use of descriptive title restricted.

1 (a) No person may use in connection with his or her name
2 or otherwise assume, use or advertise any title or description
3 tending to convey the impression that he or she is a registered
4 forester or registered forestry technician unless he or she is
5 certified in accordance with this article.

6 (b) Nothing contained in this article shall be construed as
7 preventing any person, firm, partnership or corporation from
8 practicing forestry, managing woodlands or forests, removing
9 any products or planting trees on any land, in any manner
10 desired.

§30-19-2. Applicable law.

1 The practice of forestry and the State Board of
2 Registration of Foresters are subject to article one of this
3 chapter, this article, and any rules promulgated hereunder.

§30-19-3. Definitions.

1 As used in this article, the following words and terms
2 have the following meanings:

3 (a) "Board" means the State Board of Registration of
4 Foresters.

5 (b) "Certificate" means a certificate issued to practice as
6 a registered forester or registered forestry technician.

7 (c) "Certification" means a certificate issued under the
8 provisions of this article.

9 (d) "Certified" means a person holding a certification
10 issued under the provisions of this article.

11 (e) "Forester" means a person who has acquired
12 specialized forestry training by reason of his or her
13 knowledge of the natural sciences, mathematics, silviculture,
14 forest protection, forest management, forest economics and
15 forest utilization, acquired by professional forestry education
16 and practical experience.

17 (f) "Forester-in-training" or "Forestry technician-in-
18 training" means a person who possesses the necessary
19 educational qualifications as prescribed in this article for
20 certification, but who has not completed the experience
21 requirements in the field of forestry as required for
22 certification.

23 (g) "Forestry" means the professional practice embracing
24 the science, business, and the art of creating, conserving and
25 managing forests and forestlands for the sustained use and
26 enjoyment of their resources, material or other forest
27 produce.

28 (h) "Practice of forestry" means professional forestry
29 services, including the consultation, investigation, evaluation,
30 planning or responsible supervision of any forestry activities
31 when such professional service requires the application of
32 forestry principles and techniques.

33 (i) "Permit" means a document issued as evidence of
34 qualification to practice as a forester-in-training or forestry
35 technician-in-training under this article.

36 (j) "Permitee" means a person holding a permit issued
37 under the provisions of this article.

38 (k) "Registered Forester" means a forester certified under
39 this article.

40 (l) "Registered Forestry Technician" means a forestry
41 technician certified under this article.

§30-19-4. State Board of Registration of Foresters.

1 (a) The State Board of Registration of Foresters is
2 continued. The members of the board in office on July 1,
3 2009, shall, unless sooner removed, continue to serve until
4 their respective terms expire and until their successors have
5 been appointed and qualified.

6 (b) To be effective on July 1, 2009, the Governor shall
7 appoint, by and with the advise and consent of the Senate, a
8 registered forestry technician to replace the board member
9 whose term ends on June 30, 2009.

10 (c) Commencing July 1, 2009, the board shall consist of
11 the following five members:

12 (1) Four registered foresters; and

13 (2) One registered forestry technician.

14 (d) Each member shall be appointed by the Governor, by
15 and with the consent of the Senate, from five nominees
16 recommended by the West Virginia Division of the Society
17 of American Foresters. The term is for five years.

18 (e) A member may not serve more than two consecutive
19 full terms. A member having served two consecutive full
20 terms may not be appointed for one year after completion of
21 his or her second full term. A member may continue to serve
22 until a successor has been appointed and qualified.

23 (f) Each member of the board shall be a resident of West
24 Virginia during the appointment term.

25 (g) Each member must have been certified in this state for
26 a period of not less than three years prior to his or her
27 appointment and must have engaged in the practice of
28 forestry for at least ten years.

29 (h) Each member shall maintain an active certification
30 with the board.

31 (i) The Governor may remove any member from the
32 board for neglect of duty, incompetency or official
33 misconduct.

34 (j) A member of the board immediately and automatically
35 forfeits membership to the board if his or her certification has
36 been suspended or revoked, is convicted of a felony under the
37 laws of any jurisdiction, or becomes a nonresident of this
38 state.

39 (k) The board shall elect annually one of its members as
40 chairperson and one member as secretary who shall serve at
41 the will and pleasure of the board.

42 (l) Each member of the board is entitled to compensation
43 and expense reimbursement in accordance with article one of
44 this chapter.

45 (m) A majority of the members serving on the board
46 constitutes a quorum.

47 (n) The board shall hold at least two meetings annually.
48 Other meetings shall be held at the call of the chairperson or
49 upon the written request of two members, at such time and
50 place as designated in the call or request.

51 (o) Prior to commencing his or her duties as a member of
52 the board, each member shall take and subscribe to the oath
53 required by section five, article four of the Constitution of
54 this state.

§30-19-5. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in
2 this article, by rule, in article one of this chapter and
3 elsewhere in law.

4 (b) The board shall:

5 (1) Hold meetings, conduct hearings and administer
6 examinations;

7 (2) Establish requirements for a certification or permit;

8 (3) Establish procedures for submitting, approving and
9 rejecting applications for a certification or permit;

10 (4) Determine the qualifications of any applicant for a
11 certification or permit;

12 (5) Prepare, conduct, administer and grade written, oral
13 or written and oral examinations for a certificate;

14 (6) Determine the passing grade for the examinations;

15 (7) Maintain records of the examinations the board or a
16 third party administers, including the number of persons
17 taking the examination and the pass and fail rate;

18 (8) Maintain an office, and hire, discharge, establish the
19 job requirements and fix the compensation of employees and
20 contracted employees necessary to enforce this article;

21 (9) Investigate alleged violations of this article,
22 legislative rules, orders and final decisions of the board;

23 (10) Conduct disciplinary hearings of persons regulated
24 by the board;

25 (11) Determine disciplinary action and issue orders;

26 (12) Institute appropriate legal action for the enforcement
27 of this article;

28 (13) Maintain an accurate registry of names and
29 addresses of all persons regulated by the board;

30 (14) Keep accurate and complete records of its
31 proceedings, and certify the same as may be necessary and
32 appropriate;

33 (15) Establish, by legislative rule, the continuing
34 education requirements for certificate holders and permittees;
35 and

36 (16) Propose rules in accordance with article three,
37 chapter twenty-nine-a of this code to implement this article.

38 (c) The board may:

39 (1) Contract with third parties to administer the
40 examinations required under this article;

41 (2) Define, by legislative rule, the fees charged under this
42 article;

43 (3) Issue, renew, deny, suspend, revoke or reinstate a
44 certification or permit;

45 (4) Sue and be sued in its official name as an agency of
46 this state;

47 (5) Confer with the Attorney General or his or her
48 assistant in connection with legal matters and questions; and

49 (6) Take all other actions proper to effectuate the
50 purposes of this article.

§30-19-6. Rulemaking.

1 (a) The board shall propose rules for legislative approval,
2 in accordance with article three, chapter twenty-nine-a of this
3 code, to implement this article, including:

4 (1) Standards and requirements for a certification and
5 permit;

6 (2) Procedures for examinations and reexaminations;

7 (3) Requirements for third parties to prepare and/or
8 administer examinations and reexaminations;

9 (4) Educational and experience requirements, and the
10 passing grade on the examination;

11 (5) Standards for ethical conduct;

12 (6) Procedures for the issuance and renewal of a
13 certification and permit;

14 (7) A fee schedule;

15 (8) Continuing education requirements for a certificate
16 holder and permittee;

17 (9) Procedures for denying, suspending, revoking,
18 reinstating or limiting the practice of a certificate holder or
19 permittee;

20 (10) Requirements for inactive or revoked certificate and
21 permit; and

22 (11) Any other rules necessary to effectuate the
23 provisions of this article.

24 (b) All of the board's rules in effect on the effective date
25 of this article shall remain in effect until amended or
26 repealed, and references to former enactments of this act are
27 interpreted to mean this article.

§30-19-7. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative
2 fines, received by the board shall be deposited in a separate
3 special revenue fund in the State Treasury designated the
4 "Board of Foresters Fund", which fund is continued. The
5 fund shall be used by the board for the administration of this
6 article. Except as provided in article one of this chapter, the
7 board shall retain the amounts in the special revenue account
8 from year to year. No compensation or expense incurred
9 under this article is a charge against the General Revenue
10 Fund.

11 (b) Any amounts received as administrative fines
12 imposed pursuant to this article shall be deposited into the
13 General Revenue Fund of the State Treasury.

§30-19-8. General requirements to be certified as a registered forester.

1 (a) To be eligible to be certified as a registered forester,
2 the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Have obtained either:

6 (A) Completion of a four-year degree program or masters
7 degree program in professional forestry, accredited by the
8 Society of American Foresters and have two years related
9 experience in the field of forestry; or

10 (B) Completion of a two-year technical forestry program
11 in a program accredited or recognized by the Society of
12 American Foresters, completion of a bachelor's degree in a
13 field used in the practice of forestry as approved by the board
14 and four years related experience in the field of forestry;

15 (4) Successfully pass an examination approved by the
16 board.

17 (b) Those persons licensed by the board as a forester as
18 of the effective date of this section are not required to take
19 the examination.

§30-19-9. General requirements to be registered forestry technician.

1 To be eligible to be certified as a registered forestry
2 technician, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Graduate from a two-year technical forestry program
6 accredited or recognized by the Society of American
7 Foresters;

8 (4) Complete four years of related experience in the field
9 of forestry.

**§30-19-10. Qualifications for permit as a forester-in-training or
a forestry technician-in-training.**

1 (a) The board may issue a permit to practice as a forester-
2 in-training or a forestry technician-in-training to an applicant
3 who meets all the requirements for certification, except the
4 experience requirements of paragraph (A) or (B), subdivision
5 three, subsection (a), section eight or subdivision four,
6 section nine.

7 (b) A permit to practice as a forester-in-training or
8 forestry technician-in-training may be renewed annually for
9 a period not to exceed five years. The board may extend the
10 five year limitation if the board finds the applicant
11 experienced an undue hardship which prevented the
12 attainment of the required experience.

§30-19-11. License from another state.

1 The board may issue a certification to a person as a
2 registered forester in this state, without requiring an
3 examination, to an applicant from another jurisdiction who:

4 (1) Is not a resident of this state;

5 (2) Is of good moral character;

6 (3) Holds a valid forestry license or other authorization to
7 practice forestry in another jurisdiction which meets
8 requirements that are substantially equivalent to the
9 certification requirements set forth in this article;

10 (4) Is not currently being investigated by a disciplinary
11 authority of this state or another jurisdiction, does not have
12 charges pending against his or her authorization, and has
13 never had his or her authorization revoked;

14 (5) Has not previously failed an examination for
15 certification in this state;

16 (6) Has paid all the applicable fees; and

17 (7) Has completed such other action as required by the
18 board.

§30-19-12. Renewal requirements.

1 (a) All persons regulated under the provisions of this
2 article shall annually before January 1, renew his or her
3 certification or permit by completing a form prescribed by
4 the board and submit any other information required by the
5 board.

6 (b) At least thirty days prior to July 1 of each year, the
7 board shall mail to every person regulated under the
8 provisions of this article an application for renewal.

9 (c) The board shall charge a fee for each renewal of a
10 certification or permit and may charge a late fee for any
11 renewal not paid in a timely manner.

12 (d) The board shall require as a condition for the renewal
13 of a certification or permit that each person regulated under
14 the provisions of this article complete continuing education.

15 (e) The board may deny an application for renewal for
16 any reason which would justify the denial of an original
17 application for a certification or permit.

**§30-19-13. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

1 (a) The board may upon its own motion based on credible
2 information, and shall upon the written complaint of any
3 person, cause an investigation to be made to determine
4 whether grounds exist for disciplinary action under this
5 article or the legislative rules of the board.

6 (b) Upon initiation or receipt of the complaint, the board
7 shall provide a copy of the complaint to the certificate holder
8 or permittee.

9 (c) After reviewing any information obtained through an
10 investigation, the board shall determine if probable cause
11 exists that the certificate holder or permittee has violated
12 subsection (g) of this section or rules promulgated pursuant
13 to this article.

14 (d) Upon a finding that probable cause exists that the
15 certificate holder or permittee has violated subsection (g) of
16 this section or rules promulgated pursuant to this article, the
17 board may enter into a consent decree or hold a hearing for
18 the suspension or revocation of the certification or permit or
19 the imposition of sanctions against the certificate holder or
20 permittee. Any hearing shall be held in accordance with the
21 provisions of this article.

22 (e) Any member of the board or the executive director of
23 the board may issue subpoenas and subpoenas duces tecum
24 to obtain testimony and documents to aid in the investigation
25 of allegations against any person regulated by the article.

26 (f) Any member of the board or its executive director
27 may sign a consent decree or other legal document on behalf
28 of the board.

29 (g) The board may, after notice and opportunity for
30 hearing, deny or refuse to renew, suspend or revoke the
31 certification or permit of, impose probationary conditions
32 upon or take disciplinary action against, any certificate holder
33 or permittee for any of the following reasons once a violation
34 has been proven by a preponderance of the evidence:

35 (1) Obtaining a certification or permit by fraud,
36 misrepresentation or concealment of material facts;

37 (2) Being convicted of a felony or other crime involving
38 moral turpitude;

39 (3) Being guilty of unprofessional conduct as defined by
40 legislative rule of the board;

41 (4) Violating this article or lawful order or rule of the
42 board;

43 (5) Having had a certificate or permit revoked or
44 suspended, other disciplinary action taken, or an application
45 for certification or permit or other authorization refused,
46 revoked or suspended by the proper authorities of another
47 jurisdiction; or

48 (6) Engaging in any act which has endangered or is likely
49 to endanger the health, welfare or safety of the public.

50 (h) For the purposes of subsection (g) of this section,
51 disciplinary action may include:

52 (1) Reprimand;

53 (2) Probation;

54 (3) Administrative fine, not to exceed \$1,000 per day per
55 violation;

56 (4) Mandatory attendance at continuing education
57 seminars or other training;

58 (5) Practicing under supervision or other restriction;

59 (6) Requiring the certificate holder or permittee to report
60 to the board for periodic interviews for a specified period of
61 time; or

62 (7) Other corrective action considered by the board to be
63 necessary to protect the public, including advising other
64 parties whose legitimate interests may be at risk.

§30-19-14. Procedures for hearing; right of appeal.

1 (a) Hearings shall be governed by section eight, article
2 one of this chapter.

3 (b) The board may conduct the hearing or elect to have an
4 administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law
6 judge, at the conclusion of a hearing he or she shall prepare
7 a proposed written order containing findings of fact and
8 conclusions of law. The proposed order may contain
9 proposed disciplinary actions if the board so directs. The

10 board may accept, reject or modify the decision of the
11 administrative law judge.

12 (d) Any member or the executive director of the board
13 has the authority to administer oaths, examine any person
14 under oath and issue subpoenas and subpoenas duces tecum.

15 (e) If, after a hearing, the board determines the certificate
16 holder or permittee has violated this article or the board's
17 rules, a formal written decision shall be prepared which
18 contains findings of fact, conclusions of law and a specific
19 description of the disciplinary actions imposed.

§30-19-15. Judicial review; appeal to Supreme Court of Appeals.

1 Any certificate holder or permittee adversely affected by
2 a decision of the board entered after a hearing may obtain
3 judicial review of the decision in accordance with section
4 four, article five, chapter twenty-nine-a of this code, and may
5 appeal any ruling resulting from judicial review in
6 accordance with article six, chapter twenty-nine-a of this
7 code.

§30-19-16. Criminal proceedings; penalties.

1 (a) When, as a result of an investigation under this article
2 or otherwise, the board has reason to believe that a certificate
3 holder or permittee has committed a criminal offense under
4 this article, the board may bring the information to the
5 attention of an appropriate law-enforcement official.

6 (b) Effective July 15, 2009, a person violating a provision
7 of this article is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not less than \$500 nor more
9 than \$1,000 or confined in jail not more than six months, or
10 both fined and confined.

§30-19-17. Single act evidence of practice.

1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act
3 prohibited by this article is sufficient to justify a penalty,
4 injunction, restraining order or conviction without evidence
5 of a general course of conduct.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



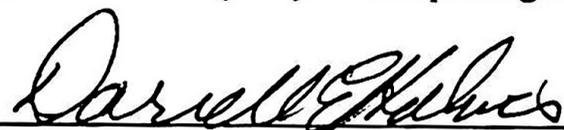
Chairman Senate Committee



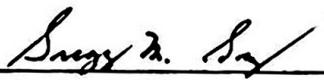
Chairman House Committee

Originating in the House.

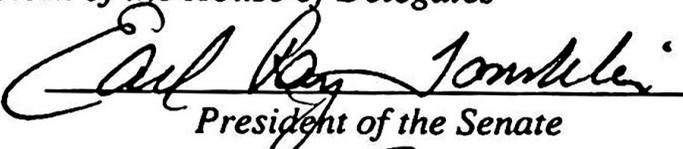
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

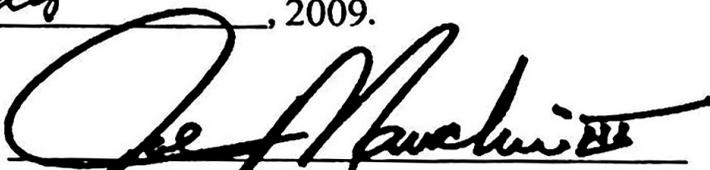


President of the Senate



Speaker of the House of Delegates

The within is approved this the 7th
day of May, 2009.



Governor

PRESENTED TO THE
GOVERNOR

MAY 6 2009

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