WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2011

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 458
(Senators Laird, Fanning, D. Facemire, Williams,
McCabe and Plymale, original sponsors)
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Senate Bill No. 458

(SENATORS LAIRD, FANNING, D. FACEMIRE, WILLIAMS,
McCabe and Plymale, original sponsors)

[Passed March 2, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7, §19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931, as amended, all relating to updating the Logging Sediment Control Act; increasing licensure and certification fees; requiring the Division of Forestry to report certain information to the Tax Commissioner on a monthly basis; requiring the Director of the Division of Forestry to notify the Director of the Division of Water and Waste Management of the Department of Environmental Protection of licensure suspension or revocation within thirty days; establishing renewal of licensure and certification on a biennial basis; permitting the director the discretion to immediately suspend a timbering operator or operation, or any part of a timbering operation, in any part of the state; and requiring the Director of the Division of Forestry to convene a committee to review best management practices at least every five years.

*Be it enacted by the Legislature of West Virginia:*
That §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7, §19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING OPERATIONS.

§19-1B-3. Definitions.

(a) “Best management practices” means sediment control measures, structural or nonstructural, used singly or in combination, to reduce soil runoff from land disturbances associated with commercial timber harvesting.

(b) “Chief” means the Director of the Division of Water and Waste Management of the Department of Environmental Protection, or his or her designee.

(c) “Director” means the Director of the Division of Forestry of the Department of Commerce or his or her designee.

(d) “Operator” means any person who conducts timbering operations.

(e) “Timbering operation,” or the plural, means activities directly related to the severing or removal of standing trees from the forest as a raw material for commercial processes or purposes. For the purpose of this article, timbering operations do not include the severing of evergreens grown for and severed for the traditional Christmas holiday season; the severing of trees incidental to ground-disturbing construction activities, including well sites, access roads and gathering lines for oil and natural gas operations; the severing of trees for maintaining existing, or during construction of, rights-of-way for public highways or public utilities or any company subject to the jurisdiction of the Federal Energy Regulatory Commission unless the trees so severed are being sold or provided as raw material for commercial wood product purposes; or the severing of trees by an individual on
the individual's own property for his or her individual use provided that the individual does not have the severing done by a person whose business is the severing or removal of trees.

(f) "Sediment" means solid particulate matter, usually soil or minute rock fragments, moved by wind, rainfall or snowmelt into the streams of the state.

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

(a) A person may not conduct timbering operations, purchase timber or buy logs for resale until he or she has obtained a license and met the requirements of this article.

(b) Exemptions.—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 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 $15,528. A person hired or contracted to sever or remove standing trees from the land of another is exempted from the timbering operations licensure requirement of this section during any calendar year in which all trees severed or removed by the hired or contracted person have an aggregate stumpage value that does not exceed $15,528.

(c) An applicant for a timbering operation license shall submit an application and the fee of $150 for each biennial renewal of the license. The application shall 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 month of the calendar year to ensure compliance with payment of severance, income withholding and all other applicable state taxes; and

(3) Any other information as required by the director.

(d) The director shall propose rules for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code, regarding the acquisition, suspension and revocation a license under this article. The rules are the proper subject of emergency legislative rules that may be promulgated in accordance with the provision of section fifteen, article three, section twenty-nine-a of this code.

(e) 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-5. Compliance orders; suspension of timbering operation license.

(a) Upon a finding by the chief that failure to use a particular best management practice is causing or contributing, or has the potential to cause or contribute, to soil erosion or water pollution, the chief shall notify the director of the location of the site, the problem associated with the site, and any suggested corrective action. Upon the failure of the director to take appropriate action within three days of providing notice to the director, the chief may seek relief through the conference panel in accordance with section eleven of this article.

(b) Upon notification of the chief or upon a finding by the director that failure to use a particular best management practice is causing or contributing, or has the potential to
cause or contribute, to soil erosion or water pollution, the
director shall issue a written compliance order requiring the
person conducting the timbering operation to take corrective
action. The order shall mandate compliance within a reason-
able and practical time not to exceed ten days. The person
subject to the order may appeal the order within forty-eight
hours of its issuance to the conference panel in accordance
with section eleven of this article.

(c) The director has the discretion to immediately suspend
a timbering operator or operation, or any part of a timbering
operation, in any part of the state if:

(1) The director believes that the observed damage or
circumstances on a timbering operation are sufficient to
endanger life or result in uncorrectable soil erosion or water
pollution, or if the;

(2) The operator is not licensed pursuant to this article; or

(3) A certified logger is not supervising the timbering
operation.

(d) The timbering operation, the operator, or both shall
remain suspended until the corrective action mandated in
the compliance order is instituted. The director shall not lift
the suspension until compliance is satisfactory or until
overruled on appeal. Failure to comply with any compliance
order is a violation of this article. The timbering operator or
operation subject to the compliance order may appeal to the
conference panel in accordance with the provisions of
section eleven of this article.

(e) For a second violation within any two-year period, the
director may suspend the license of any operator conducting
a timbering operation or the certification of any certified
logger supervising a timbering operation for no less than
thirty nor more than ninety days if the person is found in
violation of this article or article eleven, chapter twenty-two
of this code. One or more violations for the same incident is
only one violation for purposes of this subsection.

(f) For a third violation within any two-year period, the
director may revoke the license of any operator conducting
timbering operations or the certification of any certified
logger if the person is found in violation of this article or
article eleven, chapter twenty-two of this code. One or more
violations for the same incident is only one violation for
purposes of this subsection. A revoked license is not subject
to reissue during the current licensing period.

(g) The director shall notify the chief of any order issued or
any suspension or revocation of a license pursuant to this
section within thirty days of the director’s action.

§19-1B-7. Certification of persons supervising timbering opera-
tions; 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 require-
ments 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 education, training and examina-
tion that must be successfully completed for persons to be
certified to supervise any timbering operation. The program
for certified loggers shall provide 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 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 environmentally sound
and safe.
(c) The director shall provide programs using the resources of the division, other appropriate state agencies, educational entities 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 propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, to effectuate the purposes of this article.

(e) Upon a person's successful completion of the certification requirements, the director shall provide 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 four succeeding years. For the second renewal and every other 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. All timbering operators shall be guided by the West Virginia forest practice standards and the West Virginia silvicultural best management practices to reduce sediment movement during a timber operation.

(h) The director shall, at no more than five-year intervals, convene a committee to review the best management practices to ensure that they reflect and incorporate the most current technologies. The committee shall, at a minimum, include a person researching silvicultural best management practices, a person in the field of silviculture, two loggers...
certified under this article, a representative of the Division of Water and Waste Management of the Department of Environmental Protection and a representative of an environmental organization. The director shall chair the committee and may amend the best management practices according to the suggestions of the committee for the next certification cycle.

§19-1B-11. Creation of conference panels; authority.

(a) Each forestry region in this state shall contain an informal conference panel composed of three persons to decide appeals of the director's orders. One member of the panel shall be selected by the director, one member shall be selected by the chief and one member shall be selected by agreement between the chief and the director. If a vacancy exists on the panel, the vacancy shall be filled by whomever made the initial selection. The members of the panel shall serve without compensation.

(b) Upon appeal of a decision under this section or upon petition by the chief, pursuant to the provisions of subsection (a), section five of this article, the panel shall hold an informal conference affirming, modifying or vacating an order of the director, or issuing an order in the name of the director. The panel shall forthwith notify the parties of its decision and as soon as practicable send written notice of its decision to the parties. The decision of the panel is final.

(c) A party aggrieved by a decision of a panel may appeal to the circuit court of the county wherein the cause for the order arose. The appeal must be filed with the circuit court within twenty days of the date of decision of the panel and shall be heard de novo by the court. The court may reverse, vacate or modify the decision of the panel. The decision of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in the manner provided by law.
§19-1B-12a. Criminal penalties.

(a) A 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 $250 and not more than $500 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 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 conducted, 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 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 sections five, ten or eleven of this article.

(b) For the purposes of this section, each day that a person conducts timbering operations in this state without a license as 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 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 technician employed by the Division of Forestry, who,
as a part of his or her official duties is authorized by the Director of the Division of Forestry to inspect timbering operations, is authorized to issue citations for any of the listed violations in this article that he or she has witnessed. The limited authority granted 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 ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within............................................. this the............... Day of.................................................., 2011.

Governor