

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled
Committee Substitute
for
Senate Bill 404

SENATORS SYPOLT AND BOSO, *original sponsors*

[Passed March 7, 2019; in effect 90 days from
passage]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2019 MAR 25 P 4:46

FILED

SB 404

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1 AN ACT to amend and reenact §19-1B-4, §19-1B-6, §19-1B-7, §19-1B-10, and §19-1B-12a of
2 the Code of West Virginia, 1931, as amended, all relating generally to sediment control
3 during commercial timber harvesting operations; increasing the threshold amount before
4 a logger must follow certain licensing requirements regarding sediment control; requiring
5 the logger to notify the Director of the Division of Forestry at least three days before
6 timbering begins; requiring certain training requirements prior to recertification of certified
7 loggers; providing for appeals; increasing criminal penalties; and editing certain limitations
8 on issuing citations and powers of arrest.

Be it enacted by the Legislature of West Virginia:

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

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

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

3 (b) *Exemptions.* — A person who severs or removes, or hires or contracts with another to
4 sever or remove, standing trees from his or her own land is exempted from the timbering
5 operations licensure requirement of this section during any calendar year in which all trees
6 severed or removed by or on behalf of the owner of record has a total gross sales value received
7 by the exemption holder of less than \$52,000. A person hired or contracted to sever or remove
8 standing trees from the land of another is exempted from the timbering operations licensure
9 requirement of this section during any calendar year in which all trees severed or removed by the
10 hired or contracted person has a total gross sales value received by the exemption holder of less
11 than \$52,000.

12 (c) An applicant for a timbering operation license shall submit an application and the fee
13 of \$150 for each biennial renewal of the license. The application shall contain the following
14 information:

15 (1) Name, address, and telephone number of the applicant and, if the applicant is a
16 business entity other than a sole proprietor, the names and addresses of the principals, officers,
17 and resident agent of the business entity;

18 (2) The applicant's West Virginia business registration number or a copy of the current
19 West Virginia business registration certificate. The Division of Forestry shall submit this
20 information and a list of all applicants to the Tax Commissioner each month of the calendar year
21 to ensure compliance with payment of severance, income withholding, and all other applicable
22 state taxes; and

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

24 (d) The director shall propose rules for legislative approval pursuant to the provisions of
25 §29A-3-1 *et seq.* of this code regarding the acquisition, suspension, and revocation of a license
26 under this article. The rules are the proper subject of emergency legislative rules that may be
27 promulgated in accordance with the provision of §29A-3-15 of this code.

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

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

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

5 (1) All persons who conduct timbering operations or who harvest timber for sale, including
6 those persons who are specifically exempted from the licensure requirements of §19-1B-4 of this
7 code, shall provide to the director of the division notification of harvesting of timber, which shall
8 include:

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

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

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

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

15 (2) In addition to the requirements of subdivision (1) of this subsection, persons who are
16 subject to the licensure requirements of §19-1B-4 of this code shall provide to the director of the
17 division notification of timbering operations, which shall include, at a minimum, the following:

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

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

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

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

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

26 (F) A description of the sediment control practices to be used by the logger during the
27 timber harvesting operation;

28 (G) An acknowledgment that the operator will conduct the operations in compliance with
29 the provisions of this article and any applicable rules promulgated pursuant to this article;

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

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

35 (b) The notification shall be made at least three days before the start of the operation.

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

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

1 (a) Any individual supervising any licensed timbering operation, or any individual
2 supervising any timbering operation that is not exempted from the licensing requirements set forth
3 in §19-1B-4 of this code, must be certified pursuant to this section.

4 (b) The director is responsible for the development of standards and criteria for education,
5 training, and examination that must be successfully completed for persons to be certified to
6 supervise any timbering operation. The certified logger shall attend a total of six hours of training
7 every two years prior to recertification. The program for certified loggers shall, at a minimum,
8 provide for education and training in the safe conduct of timbering operations, in first aid
9 procedures, and in the use of best management practices to prevent soil erosion on timbering
10 operations. The goals of this program will be to assure that timbering operations are conducted
11 in accordance with applicable state and federal safety regulations in a manner that is
12 environmentally sound and safe.

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

17 (d) The director shall propose rules for legislative approval in accordance with §29A-3-1
18 *et seq.* of this code to effectuate the purposes of this article.

19 (e) Upon a person's successful completion of the certification requirements, the director
20 shall provide proof of the completion by issuing a numbered certificate and a wallet-sized card to

21 that person. The division shall maintain a record of each certificate issued and the person to whom
22 it was issued.

23 (f) The certified logger shall submit a fee of \$150 for the initial certification application and
24 the renewal application every two years thereafter.

25 (g) Every timbering operation that is required to be licensed under §19-1B-4 of this code
26 must have at least one person certified pursuant to this section supervising the operation at any
27 time the timbering operation is being conducted. All timbering operators shall be guided by the
28 West Virginia forest practice standards and the West Virginia silvicultural best management
29 practices to reduce sediment movement during a timber operation.

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

§19-1B-10. Orders of the director.

1 Notwithstanding the provisions of §19-1B-5 of this code, whenever the director determines
2 that any person has violated a provision of this article or any rules promulgated pursuant thereto,
3 he or she may enter an order directing the person to cease the violation and, where appropriate,
4 to take such action to remediate damage created or to take action appropriate for the specific site.

5 Any person having an interest which is or may be adversely affected by any order of the
6 director may file an appeal in accordance with the provisions of §19-1B-11 of this code. Any
7 person or entity aggrieved by an order issued under the provisions of §19-1B-5(b) or §19-1B-5(c)
8 of this code may file an appeal under the provisions of §19-1B-11 of this code.

9 Any persons or entity aggrieved by a suspension or revocation order issued under the
10 provisions of §19-1B-5(e) or §19-1B-5(f) of this code may file an appeal in accordance with the
11 provisions of §29A-5-1 *et seq.* and §29A-6-1 *et seq.* of this code.

§19-1B-12a. Criminal and civil penalties.

1 (a) It is illegal for a person to:

2 (1) Conduct timbering operations, purchase timber, or buy logs for resale in this state
3 without holding a valid license from the Director of the Division of Forestry, as required by §19-
4 1B-4 of this code;

5 (2) Conduct timbering operations or sever trees for sale at a location in this state without
6 providing the Director of the Division of Forestry with notice of the location where the timbering or
7 harvesting operations are to be conducted, as required by §19-1B-6 of this code;

8 (3) Conduct a timbering operation in this state that is not supervised by a certified logger
9 who holds a valid certificate from the Director of the Division of Forestry, as required by §19-1B-
10 7 of this code;

11 (4) Continue to conduct timbering operations in violation of a suspension or revocation
12 order that has been issued by the Director of the Division of Forestry or a conference panel under
13 §19-1B-5, §19-1B-10, or §19-1B-11 of this code; and

14 (5) Fail to reclaim the real property in accordance with the best management practices set
15 forth by the Division of Forestry and the committee established in §19-1B-7(h) of this code.

16 (b) *Criminal and civil penalties.* — A person who violates any provision of this section is
17 guilty of a misdemeanor and, upon conviction, shall be: (1) Fined not less than \$250 nor more
18 than \$500 for the first offense; (2) fined not less than \$500 nor more than \$1,000 for a second
19 offense; (3) fined not less than \$1,000 nor more than \$5,000, or confined in jail not more than 30
20 days, or both, for a third or subsequent offense. In addition to fines and costs, a person or entity
21 convicted of a violation of this section shall pay a \$500 civil penalty to the division within 60 days.
22 The civil penalty shall be collected by the court in which the person is convicted and forwarded to

23 the State Treasurer for deposit in the Division of Forestry Timber Operations Enforcement Fund
24 (3082) for use in administering the provisions of this article.

25 (c) Each day that a person is in violation of this section constitutes a separate criminal and
26 civil offense.

27 (d) In addition to any other law-enforcement agencies that have jurisdiction over criminal
28 violations, the following individuals who, as a part of their official duties, are authorized by the
29 Director of the Division of Forestry to inspect timbering operations are also authorized to issue
30 citations for any of the listed violations in this article that they have witnessed or confirmed through
31 evidence thereof:

32 (1) Any forester;

33 (2) Any forest technician;

34 (3) Any forestry employee who has a two-year or four-year higher education degree in the
35 field of forestry; or

36 (4) Any forestry employee that is accompanied by a forestry employee with a two-year or
37 four-year higher education degree in forestry.

38 The limited authority granted to employees of the Division of Forestry to issue citations to
39 enforce the provisions of this section does not include the power to place any individual or person
40 under arrest except in the case of a third offense misdemeanor violation as defined in subsection
41 (b) of this section.

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

Mark St. Mary
.....
Chairman, Senate Committee

Robert Gato
.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Joe Lavin
.....
Clerk of the Senate

Steve Harris
.....
Clerk of the House of Delegates

Will B. Carmichael
.....
President of the Senate

Ray Haskew
.....
Speaker of the House of Delegates

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

2019 MAR 25 P 4:46

FILED

The within *is* approved..... this the *25th*.....
Day of *March*....., 2019.

James E. Cantor
.....
Governor

PRESENTED TO THE GOVERNOR

2013

Time 11:11am