

H. B. 2985

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[BY REQUEST OF THE DIVISION OF FORESTRY]

[Introduced February 2, 2011; referred to the
Committee on Government Organization then the Judiciary.]

A BILL 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
C O M M E R C I A L T I M B E R
H A R V E S T I N G O P E R A T I O N S.**

§19-1B-3. Definitions.

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

5 (b) “Chief” means the ~~chief of the office of water~~
6 ~~resources of the Division~~ Director of the Division of Water
7 and Waste Management of the Department of
8 Environmental Protection, or his or her designee.

9 (c) “Director” means the Director of the Division of
10 Forestry of the Department of Commerce ~~labor and~~
11 ~~environmental resources~~ or his or her ~~authorized~~ designee.

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

14 (e) “Timbering ~~operations~~ operation” or “logging
15 operation,” or the plural, means activities directly related to
16 the severing or removal of standing trees from the forest as
17 a raw material for commercial processes or purposes. For
18 the purpose of this article, timbering operations do not
19 include the severing of evergreens grown for and severed
20 for the traditional Christmas holiday season, or the severing
21 of trees incidental to ground-disturbing construction
22 activities, including well sites, access roads and gathering
23 lines for oil and natural gas operations, or the severing of

24 trees for maintaining existing, or during construction of,
25 rights-of-way for public highways or public utilities or any
26 company subject to the jurisdiction of the federal energy
27 regulatory commission unless the trees so severed are being
28 sold or provided as raw material for commercial wood
29 product purposes, or the severing of trees by an individual
30 on the individual's own property for his or her individual
31 use provided that the individual does not have the severing
32 done by a person whose business is the severing or removal
33 of trees.

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

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

1 (a) ~~No~~ A person may not conduct timbering operations,
2 purchase timber or buy logs for resale until he or she has
3 obtained the license pursuant to this article from the division
4 and met all other requirements pertaining to his or her

5 timbering operation or other wood product business
6 ~~contained in~~ pursuant to this article: *Provided*, That a
7 person who severs or removes, or hires or contracts with
8 another to sever or remove, standing trees from his or her
9 own land is specifically exempted from the timbering
10 operations licensure requirement of this section during any
11 calendar year in which all trees severed or removed by or
12 for this owner have an aggregate stumpage value that does
13 not exceed \$15,528: *Provided, however*, That a person
14 hired or contracted to sever or remove standing trees from
15 the land of another is specifically exempted from the
16 timbering operations licensure requirement of this section
17 during any calendar year in which all trees severed or
18 removed by this hired or contracted person have an
19 aggregate stumpage value that does not exceed \$15,528.

20 (b) An applicant for a license shall submit an application
21 on a form to be designed and provided by the director. A
22 fee of ~~fifty dollars~~ \$150 shall be submitted with each
23 application and with each ~~annual~~ biennial renewal of the

24 license. The application shall, at a minimum, contain the
25 following information:

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

30 (2) The applicant's West Virginia business registration
31 number or a copy of the current West Virginia business
32 registration certificate. The Division of Forestry shall
33 submit this information and a list of all applicants to the Tax
34 Commissioner each ~~quarter~~ month of the calendar year to
35 ensure compliance with payment of severance, income
36 withholding and all other applicable state taxes; and

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

38 (c) The director shall ~~promulgate legislative rules~~
39 propose rules for legislative approval pursuant to the
40 provisions of article three, chapter twenty-nine-a of this
41 code which provide procedures by which a license may be
42 acquired, suspended or revoked under this article. The

43 Legislature expressly finds that these legislative rules are the
44 proper subject of emergency legislative rules which may be
45 promulgated in accordance with the provision of section
46 fifteen, article three, section twenty-nine-a of this code.

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

**§19-1B-5. Compliance orders, suspension of timbering
operating license.**

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

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

22 (c) The director has the discretion to immediately
23 suspend a timbering operator or operation, or any part of a
24 timbering operation, in any part of the state if: In any
25 circumstance where

26 (1) The director believes that the observed damage or
27 circumstances on a ~~logging~~ timbering operation, ~~in the opinion~~
28 ~~of the director~~, are sufficient to endanger life or result in
29 uncorrectable soil erosion or water pollution, or if the;

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

31 ~~or if a~~ or

32 (3) A certified logger is not supervising the timbering

33 operation. ~~the director shall order the immediate suspension~~

34 of the timber operation and the

35 (d) The timbering operation, the operator, or both shall

36 remain suspended until the corrective action mandated in the

37 compliance order ~~suspending the operation~~ is instituted.

38 The director shall not ~~issue an order cancelling~~ revoke the

39 ~~suspension~~ compliance order lifting the suspension until

40 compliance is satisfactory or until overruled on appeal.

41 Failure to comply with any compliance order is a violation

42 of this article. The ~~person~~ timbering operator or operation

43 subject to the compliance order may appeal to the

44 conference panel in accordance with the provisions of

45 section eleven of this article.

46 ~~(d)~~ (e) For a second violation within any two year-year

47 period, the ~~The~~ director may suspend the license of any

48 ~~person~~ operator conducting a timbering operation or the

49 certification of any certified logger supervising a timbering
50 operation; for no less than thirty nor more than ninety days
51 if the person operator is found in violation of this article or
52 article eleven, chapter twenty-two of this code: ~~for a second~~
53 ~~time within any two-year period~~ *Provided*, That one or
54 more violations for the same ~~occurrence~~ incident is only one
55 violation for purposes of this subsection.

56 ~~(e)~~ (f) For a third violation within any two year-year
57 period, the director may revoke the license of any person
58 operator conducting timbering operations or the certification
59 of any certified logger if the person operator is found in
60 violation of this article or article eleven, chapter twenty-two
61 of this code: ~~for a third time within any two-year period~~
62 *Provided*, That one or more violations for the same
63 ~~occurrence~~ incident is only one violation for purposes of this
64 subsection. A revoked license is not subject to reissue
65 during the current licensing period. ~~for which it was issued.~~

66 ~~(f)~~ (g) The director shall notify the chief of any order
67 issued or any suspension or revocation of a license pursuant

68 to this section within ~~three~~ thirty days of the date of the
69 director's action.

§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
2 operation, or any individual supervising any timbering
3 operation that is not exempted from the licensing
4 requirements set forth in section four of this article, must be
5 certified pursuant to this section.

6 (b) The director is responsible for the development of
7 standards and criteria for establishment of a regularly
8 scheduled program of education, training and examination
9 that all persons must successfully complete in order to be
10 certified to supervise any timbering operation. The program
11 for certified loggers shall provide, at a minimum, for
12 education and training in the safe conduct of timbering
13 operations, in first aid procedures and in the use of best
14 management practices to prevent, insofar as possible, soil
15 erosion on timbering operations. The goals of this program

16 will be to assure that timbering operations are conducted in
17 accordance with applicable state and federal safety
18 regulations in a manner that is safest for the individuals
19 conducting the operations and that they are performed in an
20 environmentally sound manner.

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

27 (d) The director shall ~~promulgate legislative rules~~
28 propose rules for legislative approval in accordance with
29 article three, chapter twenty-nine-a of this code, which
30 provide the procedure by which certification pursuant to this
31 article may be obtained and shall require the payment of an
32 application fee and ~~an annual~~ a biennial renewal fee of ~~fifty~~
33 ~~dollars~~ \$150.

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

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

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

54 (h) The director shall, at no more than ~~three-year~~ five-
55 year intervals after the effective date of this article, convene
56 a committee to review the best management practices so as
57 to ensure that they reflect and incorporate the most current
58 technologies. The committee shall, at a minimum, include
59 a person doing research in the field of silvicultural best
60 management practices, a person doing research in the field
61 of silviculture, two loggers certified under this article, a
62 representative of the office of water resources of the
63 Department of Environmental Protection and a
64 representative of an environmentally active organization.
65 The director shall chair the committee and may adjust the
66 then current best management practices according to the
67 suggestions of the committee in time for the next
68 certification cycle.

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

1 (a) Each forestry ~~district~~ region in this state shall contain
2 an informal conference panel composed of three persons
3 which shall act on behalf of the state to decide appeals of

4 orders of the director. One member of the panel shall be
5 selected by the director, one member shall be selected by the
6 chief and one member shall be selected by agreement
7 between the chief and the director. If a vacancy exists on the
8 panel, the vacancy shall be filled by whomever made the
9 initial selection. The members of the panel shall serve
10 without compensation.

11 (b) Upon appeal of a decision under this section or upon
12 petition by the chief, pursuant to the provisions of
13 subsection (a), section five of this article, the panel shall
14 hold an informal conference affirming, modifying or
15 vacating an order of the director, or issuing an order in the
16 name of the director. The panel shall forthwith notify the
17 parties of its decision and as soon as practicable send written
18 notice of its decision to the parties. The decision of the
19 panel ~~shall be~~ is final unless reversed, vacated or modified
20 on appeal to the circuit court of the county wherein the
21 cause for the decision arose.

22 (c) A party aggrieved by a decision of a panel may
23 appeal to the circuit court of the county wherein the cause
24 for the order arose. Such appeal must be filed with the
25 circuit court within twenty days of the date of decision of
26 the panel and shall be heard de novo by the court. The court
27 may reverse, vacate or modify the decision of the panel.
28 The decision of the circuit court shall be final unless
29 reversed, vacated or modified on appeal to the Supreme
30 Court of Appeals. Any such appeal shall be sought in the
31 manner provided by law for appeals from circuit courts in
32 other civil cases.

§19-1B-12a. Criminal penalties.

1 (a) ~~After July 1, 2002, any~~ A person who knowingly or
2 willingly commits one of the following violations is guilty
3 of a misdemeanor and, upon conviction thereof, shall be
4 fined not less than \$250 and not more than \$500 for each
5 violation:

6 (1) Conducts timbering operations or purchases timber
7 or buys logs for resale in this state without holding a valid

8 license from the Director of the Division of Forestry, as
9 required by subsection (a), section four of this article;

10 (2) Conducts timbering operations or severs trees for
11 sale at a location in this state, without providing the Director
12 of the Division of Forestry with notice of the location where
13 the timbering or harvesting operations are to be conducted,
14 as required by section six of this article;

15 (3) Conducts a timbering operation in this state that is
16 not supervised by a certified logger who holds a valid
17 certificate from the Director of the Division of Forestry, as
18 required by section seven of this article; or

19 (4) Continues to conduct timbering or logging
20 operations in violation of an existing suspension or
21 revocation order that has been issued by the Director of the
22 Division of Forestry or a conference panel under section
23 five, ten or eleven of this article.

24 (b) For the purposes of this section, each day that a
25 person conducts logging or timbering operations in this state
26 without a license ~~that is~~ as required by this article, without
27 the supervision of a certified logger as required by this

28 article, without providing notice of the location to the
29 director ~~of forestry~~ as required by this article, or in violation
30 of an outstanding suspension or revocation order shall
31 constitute a separate offense.

32 (c) In addition to any other law-enforcement agencies
33 that have jurisdiction over criminal violations, any forester
34 or forest ~~ranger~~ technician employed by the Division of
35 Forestry, who, as a part of his or her official duties is
36 authorized ~~or designated~~ by the Director of the Division of
37 Forestry to inspect logging or timbering activities, is ~~hereby~~
38 authorized to issue citations for any of the listed violations
39 ~~set forth above~~ in this section that he or she has personally
40 witnessed. The limited authority granted by this section to
41 employees of the Division of Forestry to issue citations to
42 enforce the provisions of this section does not include the
43 power to place any individual or person under arrest.

NOTE: The purpose of this bill is to update the Logging Sediment Control Act and to include a biennial licensure and fee.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.