

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 458

(By Senators Laird, Fanning, D. Facemire,
Williams, McCabe and Plymale)

[Originating in the Committee on Natural Resources;
reported February 17, 2011.]

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 COMMERCIAL TIMBER
HARVESTING OPERATIONS.**

§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 resources~~
6 ~~of the Division~~ Director of the Division of Water and Waste
7 Management of the Department of Environmental Protec-
8 tion, or his or her designee.

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

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

14 (e) “Timbering operations operation,” or the plural, means
15 activities directly related to the severing or removal of
16 standing trees from the forest as a raw material for commer-
17 cial processes or purposes. For the purpose of this article,
18 timbering operations do not include the severing of ever-
19 greens grown for and severed for the traditional Christmas
20 holiday season; ~~or~~ the severing of trees incidental to ground-
21 disturbing construction activities, including well sites, access
22 roads and gathering lines for oil and natural gas operations;
23 ~~or~~ the severing of trees for maintaining existing, or during
24 construction of, rights-of-way for public highways or public
25 utilities or any company subject to the jurisdiction of the
26 Federal Energy Regulatory Commission unless the trees so
27 severed are being sold or provided as raw material for
28 commercial wood product purposes; or the severing of trees
29 by an individual on the individual’s own property for his or
30 her individual use provided that the individual does not have

31 the severing done by a person whose business is the severing
32 or removal of trees.

33 (f) "Sediment" means solid particulate matter, usually soil
34 or minute rock fragments, moved by wind, rainfall or
35 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~~ a license ~~pursuant to this article from the~~
4 ~~division and met all other requirements pertaining to his or~~
5 ~~her timbering operation or other wood product business~~
6 ~~contained in~~ and met the requirements of this article.∴
7 ~~Provided, That a~~

8 (b) Exemptions.— A person who severs or removes, or hires
9 or contracts with another to sever or remove, standing trees
10 from his or her own land is ~~specifically~~ exempted from the
11 timbering operations licensure requirement of this section
12 during any calendar year in which all trees severed or
13 removed by or for this owner have an aggregate stumpage
14 value that does not exceed \$15,528. ~~Provided, however, That~~
15 ~~a~~ A person hired or contracted to sever or remove standing

16 trees from the land of another is ~~specifically~~ exempted from
17 the timbering operations licensure requirement of this
18 section during any calendar year in which all trees severed
19 or removed by ~~this~~ the hired or contracted person have an
20 aggregate stumpage value that does not exceed \$15,528.

21 ~~(b)~~ (c) An applicant for a timbering operation license shall
22 submit an application ~~on a form to be designed and provided~~
23 ~~by the director. A fee of fifty dollars shall be submitted with~~
24 ~~each application and with each annual~~ and the fee of \$150
25 for each biennial renewal of the license. The application
26 shall, ~~at a minimum,~~ contain the following information:

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

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

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

39 ~~(c)~~ (d) The director shall ~~promulgate legislative rules~~
40 propose rules for legislative approval pursuant to the
41 provisions of article three, chapter twenty-nine-a of this
42 code, ~~which provide procedures by which a license may be~~
43 ~~acquired, suspended or revoked~~ regarding the acquisition,
44 suspension and revocation a license under this article. The
45 ~~Legislature expressly finds that these legislative rules are the~~
46 proper subject of emergency legislative rules ~~which~~ that may
47 be promulgated in accordance with the provision of section
48 fifteen, article three, section twenty-nine-a of this code.

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

**§19-1B-5. Compliance orders; suspension of timbering operation
license.**

1 (a) Upon a finding by the chief that failure to use a particu-
2 lar best management practice is causing or contributing, or
3 has the potential to cause or contribute, to soil erosion or
4 water pollution, the chief shall notify the director of the
5 location of the site, the problem associated with the site, and

6 any suggested corrective action. Upon the failure of the
7 director to take appropriate action within three days of
8 providing notice to the director, the chief may seek relief
9 through the conference panel in accordance with section
10 eleven of this article.

11 (b) Upon notification of the chief or upon a finding by the
12 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~~ timbering operation to take
17 corrective action. The order shall mandate compliance
18 within a reasonable and practical time not to exceed ten
19 days. The person subject to the order may appeal the order
20 within forty-eight hours of its issuance to the conference
21 panel in accordance with section eleven of this article.

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

26 (1) The director believes that the observed damage or
27 circumstances on a ~~logging~~ timbering operation, ~~in the~~

28 ~~opinion of the director,~~ are sufficient to endanger life or
29 result in uncorrectable soil erosion or water pollution, or if
30 the;

31 (2) The operator is not licensed pursuant to this article; or
32 if a or

33 (3) A certified logger is not supervising the timbering
34 operation., the director shall order the immediate suspension
35 of the timber operation and the

36 (d) The timbering operation, the operator, or both shall
37 remain suspended until the corrective action mandated in
38 the compliance order ~~suspending the operation~~ is instituted.
39 The director shall not ~~issue an order cancelling~~ revoke the
40 ~~suspension~~ compliance order lifting the suspension until
41 compliance is satisfactory or until overruled on appeal.
42 Failure to comply with any compliance order is a violation of
43 this article. The ~~person~~ timbering operator or operation
44 subject to the compliance order may appeal to the conference
45 panel in accordance with the provisions of section eleven of
46 this article.

47 ~~(d)~~ (e) For a second violation within any two-year period,
48 ~~the~~ The director may suspend the license of any ~~person~~
49 operator conducting a timbering operation or the certifica-

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

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

67 ~~(f)~~ (g) The director shall notify the chief of any order issued
68 or any suspension or revocation of a license pursuant to this
69 section within ~~three~~ thirty days of ~~the date of~~ the director's
70 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 require-
4 ments 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 be~~ successfully ~~complete in order~~
10 completed for persons to be certified to supervise any
11 timbering operation. The program for certified loggers shall
12 ~~provide, at a minimum,~~ for education and training in the safe
13 conduct of timbering operations, in first aid procedures and
14 in the use of best management practices to prevent, ~~insofar~~
15 ~~as possible,~~ soil erosion on timbering operations. The goals
16 of this program will be to assure that timbering operations
17 are conducted in accordance with applicable state and
18 federal safety regulations in a manner that is ~~safest for the~~

19 ~~individuals conducting the operations and that they are~~
20 ~~performed in an environmentally sound manner and safe.~~

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

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

34 (e) Upon a person's successful completion of the certifica-
35 tion requirements, the director shall provide ~~that person~~
36 ~~with~~ proof of the completion by issuing a numbered certifi-
37 cate and a wallet-sized card to that person. The division
38 shall maintain a record of each certificate issued and the
39 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~~ All timbering operators shall be guided by
50 the West Virginia forest practice standards and the West
51 Virginia silvicultural best management practices ~~in selecting~~
52 ~~practices appropriate and adequate for reducing to reduce~~
53 sediment movement during a timber operation.

54 (h) The director shall, ~~at no more than three-year intervals~~
55 ~~after the effective date of this article~~, convene a committee
56 to review the best management practices every five years ~~so~~
57 ~~as~~ to ensure that they reflect and incorporate the most
58 current technologies. The committee shall, at a minimum,
59 include a person ~~doing research in the field of~~ researching
60 silvicultural best management practices, a person ~~doing~~
61 ~~research~~ in the field of silviculture, two loggers certified

62 under this article, a representative of the ~~office of water~~
 63 ~~resources~~ Division of Water and Waste Management of the
 64 Department of Environmental Protection and a representa-
 65 tive of an ~~environmentally active~~ environmental organiza-
 66 tion. The director shall chair the committee and may ~~adjust~~
 67 ~~the then current~~ amend the best management practices
 68 according to the suggestions of the committee ~~in time~~ for the
 69 next 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 the
 4 director's orders ~~of the director~~. One member of the panel
 5 shall be selected by the director, one member shall be
 6 selected by the chief and one member shall be selected by
 7 agreement between the chief and the director. If a vacancy
 8 exists on the panel, the vacancy shall be filled by whomever
 9 made the initial selection. The members of the panel shall
 10 serve without compensation.

11 (b) Upon appeal of a decision under this section or upon
 12 petition by the chief, pursuant to the provisions of subsection
 13 (a), section five of this article, the panel shall hold an

14 informal conference affirming, modifying or vacating an
15 order of the director, or issuing an order in the name of the
16 director. The panel shall forthwith notify the parties of its
17 decision and as soon as practicable send written notice of its
18 decision to the parties. The decision of the panel ~~shall be~~ is
19 ~~final unless reversed, vacated or modified on appeal to the~~
20 ~~circuit court of the county wherein the cause for the decision~~
21 ~~arose.~~

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

3 a misdemeanor and, upon conviction thereof, shall be fined
4 not less than \$250 and not more than \$500 for each violation:

5 (1) Conducts timbering operations or purchases timber or
6 buys logs for resale in this state without holding a valid
7 license from the Director of the Division of Forestry, as
8 required by ~~subsection (a)~~, section four of this article;

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

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

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

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

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

31 (c) In addition to any other law-enforcement agencies that
32 have jurisdiction over criminal violations, any forester or
33 forest ~~ranger~~ technician employed by the Division of For-
34 estry, who, as a part of his or her official duties is authorized
35 ~~or designated~~ by the Director of the Division of Forestry to
36 inspect ~~logging or timbering activities~~ operations, is hereby
37 authorized to issue citations for any of the listed violations
38 ~~set forth above~~ in this article that he or she has personally
39 witnessed. The limited authority granted ~~by this section~~ to
40 employees of the Division of Forestry to issue citations to
41 enforce the provisions of this section does not include the
42 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 \$150 license fee.

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