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2001 APR 20 P 5:53

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001

ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2891

(By Delegates C. White, Campbell, Coleman,
Boggs, Yeager and Stalnaker)

Passed April 12, 2001

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 2891

(BY DELEGATES C. WHITE, CAMPBELL, COLEMAN,
BOGGS, YEAGER AND STALNAKER)

[Passed April 12, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section fifty-two, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the unlawful taking of timber; providing for a first offense felony when the value of the timber is more than one thousand dollars; establishing notice requirements; and tolling of the statute of limitations.

Be it enacted by the Legislature of West Virginia:

That section fifty-two, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

§61-3-52. Wrongful injuries to timber; criminal penalties.

1 (a) Any person who willfully and maliciously and with
2 intent to do harm unlawfully enters upon the lands of another,
3 cuts down, injures, removes or destroys any timber, without the
4 permission of the owner or his or her representative is guilty of
5 a misdemeanor and, upon conviction thereof, shall be fined not
6 more than three times the value of timber injured, removed or
7 destroyed, or confined in the county or regional jail for thirty
8 days, or both: *Provided*, That if the timber is valued at one
9 thousand dollars or less, the fine shall be no more than one
10 thousand dollars: *Provided, however*, That a person convicted
11 of a first offense violation of the provisions of this section in
12 which the timber is valued at more than one thousand dollars is
13 guilty of a felony and, upon conviction thereof, shall be
14 confined in a correctional facility for not less than one nor more
15 than two years, or fined not more than three times the value of
16 the timber injured, removed or destroyed, or both fined and
17 confined: *Provided further*, That a person convicted of a second
18 or subsequent violation of the provisions of this section is guilty
19 of a felony and, upon conviction thereof, shall be confined in a
20 correctional facility for not less than one nor more than three
21 years, or fined not more than three times the value of the timber
22 injured, removed or destroyed, or both fined and confined.

23 (b) The necessary trimming and removal of timber to
24 permit the construction, repair, maintenance, cleanup and
25 operations of pipelines and utility lines and appurtenances of
26 public utilities, public service corporations and to aid registered
27 land surveyors and professional engineers in the performance
28 of their professional services, and municipalities, and pipeline
29 companies, or lawful operators and product purchasers of
30 natural resources other than timber shall not be considered a
31 willful and intentional cutting down, injuring, removing or
32 destroying of timber.

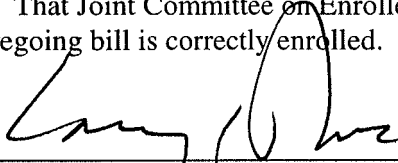
33 (c) The necessary trimming and removal of timber for
34 boundary line maintenance, for the construction, maintenance
35 and repair of streets, roads and highways or for the control and
36 regulation of traffic thereon by the state and its political
37 subdivisions or registered land surveyors and professional
38 engineers shall not be considered a willful and intentional
39 cutting down, injuring, removing or destroying of timber.

40 (d) No fine or imprisonment imposed pursuant to this
41 section shall be construed to limit any cause of action by a
42 landowner for recovery of damages otherwise allowed by law.
43 If a person charged or convicted under the provisions of this
44 section enters into an agreement with a landowner to make
45 financial restitution for the landowner's timber damages, any
46 applicable statute of limitations effecting the landowner's cause
47 of action shall be tolled from the date the agreement was
48 entered into until a breach of the agreement occurs.

49 (e) If a criminal action is brought under the provisions of
50 this section, the county prosecutor shall publish a Class II legal
51 advertisement in compliance with the provisions of article
52 three, chapter fifty-nine of this code in the county where the
53 property involved is located which provides a description of the
54 property and a general summary of the timber damages. If a
55 landowner suffering timber damages is not aware of those
56 damages prior to the publication of the Class II legal advertise-
57 ment, any applicable statute of limitations effecting the land-
58 owner's cause of action for the recovery of damages shall be
59 tolled from the time the damages were incurred, and may not
60 commence until the date the final Class II legal advertisement
61 is published.

Enr. Com. Sub. for H. B. 2891] 4

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



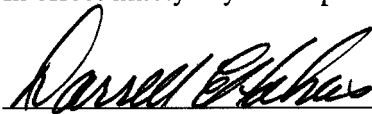
Chairman Senate Committee



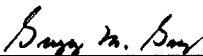
Chairman House Committee

Originating in the House.

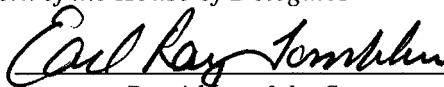
In effect ninety days from passage.



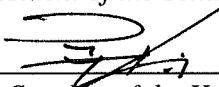
Clerk of the Senate



Clerk of the House of Delegates

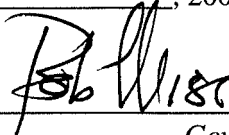


President of the Senate



Speaker of the House of Delegates

The within is approved this the 20th
day of April, 2001.



Governor

PRESENTED TO THE
GOVERNOR

Date 4/20/01

Time 10:00am